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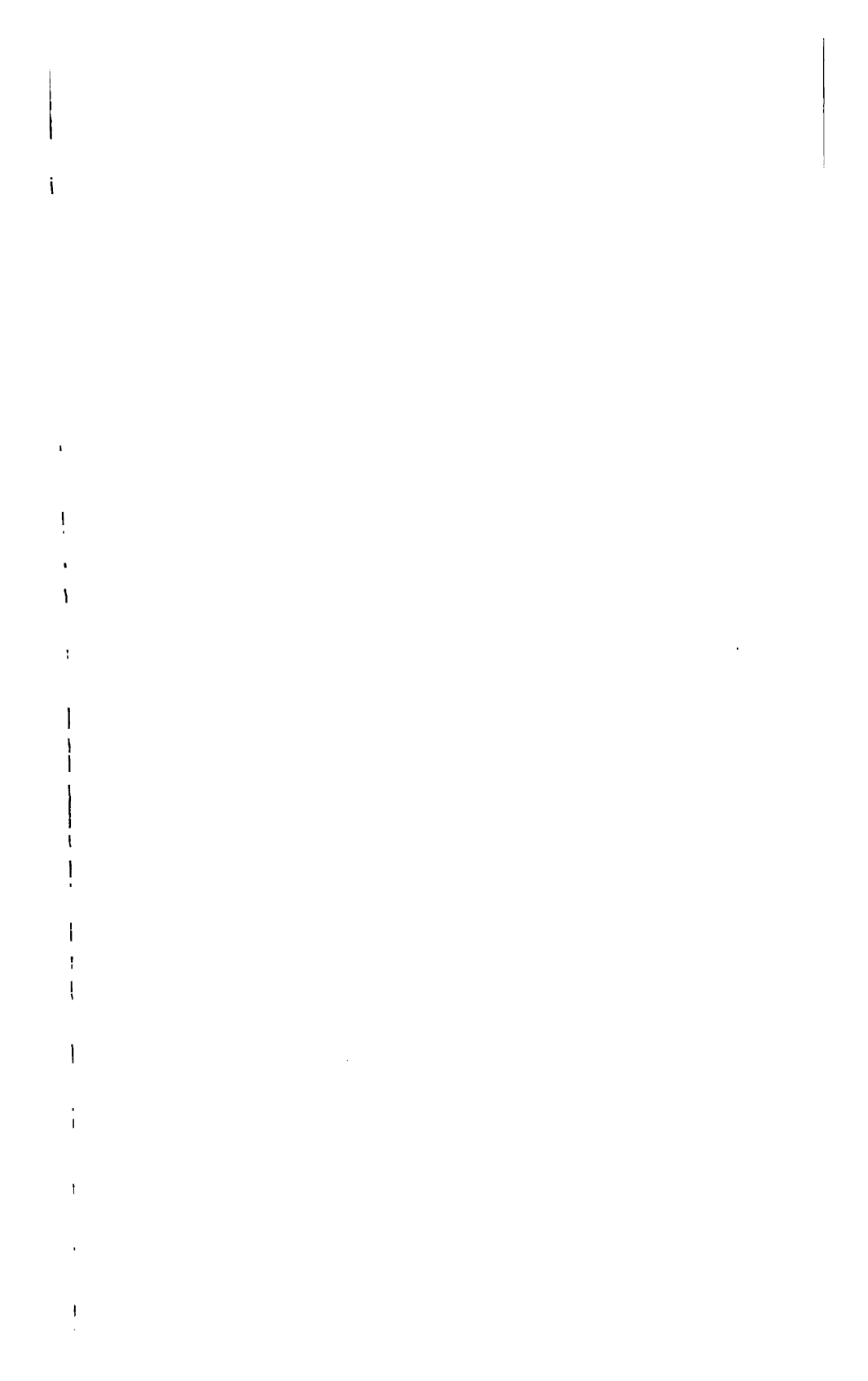
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*John McLaren*

A  
COLLECTION  
OF THE  
PUBLIC GENERAL STATUTES  
AND  
*ACTS OF SEDERUNT,*  
RELATING TO  
PROCEDURE IN THE COURTS  
OF  
EXCHEQUER, SESSION, AND TEINDS,  
(FROM THE UNION).

Including a Reprint of SIXTY of the Leading PROCEDURE ACTS, and a Selection  
of the Procedure Clauses of other Statutes now in Force.

WITH  
NOTES OF DECIDED CASES,  
MARGINAL REFERENCES, AND CLASSIFIED AND ALPHABETICAL INDICES  
TO ALL THE CLAUSES.

EDITED BY JOHN M'LAREN,  
ADVOCATE.

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## PREFACE.

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THE Editor was induced to undertake the preparation of this edition of the Procedure Statutes, and Acts of Sederunt, in consequence of the inconvenience he had experienced in consulting them. These statutes and enactments extend over a period of upwards of half a century. As they have never before been collected into one volume, it has become necessary to consult the pages of the Statutes at Large, with a view to the determination of the most ordinary questions of practice. The object of the compiler of this Edition has been, to include within the limits of a portable volume, the whole of the positive law relative to Procedure in the Superior Courts in Scotland.

Every Statute expressly relating to Procedure has been printed *in extenso*. Where provisions relative to Procedure are incorporated with other enactments, the Editor was obliged to make a selection. In such cases, the Procedure Clauses only are printed at length; and the rubric of the other clauses is inserted where this has been thought necessary in order to show the general scope and bearing of the Statute. These Extracts are distinguished from the body of the work by being printed in smaller type.

The Acts of Sederunt have also been printed at full length ; and the Editor believes that his selection will be found to include every subsisting enactment connected with the subject of the volume.

The references which have been given to decided cases are not designed to furnish a key to the Law of Process as expounded by the Courts. Apart from the cases that have been noted, there must remain a great mass of decisions upon points of Procedure not directly connected with the interpretation of the enactments, and therefore not falling within the scope of the collection.

Opposite each section of the leading Statutes will be found a marginal reference to the clauses of other Statutes and Acts of Sederunt relating to the subject. The arrangement and revision of these references, and of the Indices, has entailed on the Compiler an amount of mechanical labour which he would gladly have avoided ; but which he will not regret, if it has contributed to make the Edition more available to the Profession.

EDINBURGH, 31 *January* 1861.



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OF CLAUSES IN

## THE PUBLIC GENERAL STATUTES

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## BOOK II.

## THE COURT OF SESSION

## [CIVIL JURISDICTION].

NOTE.—Many of the older Enactments contain expressions which in their spirit are applicable to the existing Procedure, although the Forms are obsolete. These have accordingly been indexed.

## PART FIRST.

## THE COURT OF SESSION AS A COURT OF ORIGINAL JURISDICTION.

## A.—PROCESS COMMENCED BY PETITION (1).

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|                                 | Opinion of permanent Lords Ordinary may be taken, and Judgment pronounced according to the Opinion of the Majority of Judges,                               | 6 G. IV., c. 120, § 24. 206       |
| <i>Judgment. Finality, etc.</i> | No Judgment to be pronounced till Record made up and closed,                                                                                                | 6 G. IV., c. 120, § 4. 200        |
|                                 | Judgment of the Inner House shall decide Costs, and shall be final,                                                                                         | 6 G. IV., c. 120, § 21. 207       |
|                                 | Interlocutors of Court of Session on Proof taken in Inferior Courts to be final as to Findings in Fact. Power to order Issues. Advococation for Jury Trial, | 6 G. IV., c. 120, § 40. 217       |
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| <i>Abandonment.</i>             | Parties may abandon Action on paying Expenses,                                                                                                              | 6 G. IV., c. 120, § 10. 203       |

#### IV. PROOF OTHERWISE THAN BY JURY TRIAL. (See A. of S., pp. 550, 557, etc.)

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| <i>Diligence. Proof on Commission, etc.</i> | Order for Ascertainment of Facts—Appeal excluded,                                                                                                                                                  | 6 G. IV., c. 120, § 14. 205  |
|                                             | The Court of Session may grant Commissions, except in appropriated Causes,                                                                                                                         | 59 G. III., c. 35, § 13. 155 |
|                                             | Proof may be taken on Commission of Consent, or with Leave of Inner House, except in Action of Libel, Nuisance, or Damages, Witnesses abroad may be examined in Consistorial Causes by Commission, | 13 & 14 V., c. 36, § 49. 350 |
|                                             | Copy of an Interlocutor granting Commission or Diligence, to be equivalent to a formal Extract,                                                                                                    | 13 & 14 V., c. 36, § 26. 343 |
|                                             | Diligences may be reported on Box Days,                                                                                                                                                            | 13 & 14 V., c. 36, § 25. 342 |
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## V. PROCEDURE IN JURY CAUSES.

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| Provisions of 59 Geo. III., c. 35, as to remitting certain Actions to the Jury Court, etc., repealed. Description and Enumeration of Causes appropriated to Jury Trial, . . . . . | 59 G. III., c. 35, § 1. 182  |                               |
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| Superior may be compelled to grant Entries by Confirmation, . . . . .                                                     | 10 & 11 V., c. 48, § 6. | 307  |

## XII. APPEAL TO PARLIAMENT.

(See Index, voce "Appeal.")

## XIII. EXPENSES.

(See Index, voce "Expenses.")

[To avoid repetition under these two heads, the reader is referred to the corresponding titles in the Index at the end of the Volume.]

## BOOK III.

## THE COURT OF SESSION AS THE COURT OF COMMISSIONERS FOR TEINDS.

## I. JURISDICTION AND POWERS OF THE COURT, AND PROCESS.

(See A. of S., pp. 502, 517, 523, 561, 585.)

|                                                                                                                                                                 |                                |            |               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|------------|---------------|
| The Lords of Council and Session constituted Commissioners for Plantation of Kirks and Valuation of Teinds, . . . . .                                           | 6 Annæ, c. 9.                  | 429        | Jurisdiction. |
| Court empowered to judge in all Questions of Valuation, Augmentation, Prorogation of Tacks, Disjunction and Erection, proving Tenor of Decrees, etc., . . . . . | 6 Annæ, c. 9.<br>6 Annæ, c. 9. | 430<br>430 |               |
| Time of Meeting of Court, . . . . .                                                                                                                             | 48 G. III., c. 138, § 15.      | 438        |               |
| Court empowered to make Regulations for abridging Forms and Expense of Citation, and for expediting the Business, . . . .                                       | 48 G. III., c. 138, § 16.      | 439        | Process.      |

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| <i>Process.</i> | Provisions as to Reclaiming, etc., . . . . .                                                                                                                                                                                 | 53 G. III., c. 64, § 4, 5. 133 |
|                 | Court empowered to pass Acts of Sederunt for regulating Processes of Augmentation and Locality, . . . . .                                                                                                                    | 1 & 2 G. IV., c. 28, § 10. 175 |
|                 | All Proceedings of a judicial Nature (as Actions of Valuation, Proving Tenor, Suspension, Reduction, and Declarator), connected with Teinds, shall be brought before One of the Divisions of the Court of Session, . . . . . | 6 G. IV., c. 120, § 54. 223    |
|                 | Junior Lord Ordinary to be Lord Ordinary on Teinds, . . . . .                                                                                                                                                                | 53 G. III., c. 64, § 3. 133    |
|                 | Appointment of One of the Judges to be Lord Ordinary in Teind Causes, . . . . .                                                                                                                                              | 1 & 2 V., c. 118, § 2. 277     |
|                 | Judges of the Two Divisions, with Lord Ordinary on Teinds, to be the "Court of Commissioners for Teinds"—Five to be a Quorum, . . . . .                                                                                      | 2 & 3 V., c. 36, § 8. 293      |

## II. AUGMENTATION, MODIFICATION, AND LOCALITY.

(See A. of S., pp. 502, 561, 585.)

|                                  |                                                                                                                   |                                 |
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| <i>Augmenta-<br/>tions, etc.</i> | Court empowered to judge in Augmentations, Period which must elapse before Augmentation can be granted, . . . . . | 5 Annae, c. 9. 429              |
|                                  | Court may refuse to augment Stipend, . . . . .                                                                    | 48 G. III., c. 138, § 1-6. 434  |
|                                  | Conversion of Stipend into Grain, and Mode of reconverting same, . . . . .                                        | 48 G. III., c. 138, § 8-13. 437 |
|                                  | Right of surrendering Teinds not to be taken away, . . . . .                                                      | 48 G. III., c. 138, § 14. 438   |
|                                  | Clerk of the Presbytery to be made a Party to Process of Augmentation, etc., . . . . .                            | 48 G. III., c. 138, § 17. 439   |
| <i>Under<br/>L.150.</i>          | Augmentation of Benefices under L.150 yearly Value, in virtue of Act of 1810, . . . . .                           | 50 G. III., c. 84, § 1-25. 440  |
|                                  | Amendment of last mentioned Act, . . . . .                                                                        | 5 G. IV., c. 72, § 1-7. 451     |
|                                  | Exemption of such Augmentations from Pension Tax, . . . . .                                                       | 52 G. III., c. 131. 449         |
|                                  | Provisions of 50 G. 3, c. 84, and 5 G. 4, c. 72, not to extend to Churches erected under 7 & 8 Vict., . . . . .   | 7 & 8 V., c. 44, § 16. 470      |

## III. DISJUNCTION AND ERECTION.

(See A. of S., p. 524.)

|                                |                                                                                             |                               |
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| <i>Disjunc-<br/>tion, etc.</i> | Court may disjoin, etc., with Consent of Three-fourths of Heritors of the Parish, . . . . . | 6 Annae, c. 9. 430            |
|                                | Consent of Majority of Heritors declared to be sufficient, . . . . .                        | 7 & 8 V., c. 44, § 1. 459     |
|                                | Grounds for Division, . . . . .                                                             | 7 & 8 V., c. 44, § 2-4. 460   |
|                                | Division, how to affect Parish as to Roads and Poor Law, . . . . .                          | 7 & 8 V., c. 44, § 6, 7. 462  |
|                                | Where Church is built and endowed a District may be added thereto, . . . . .                | 7 & 8 V., c. 44, § 8. 463     |
|                                | Endowment and Building, etc., . . . . .                                                     | 7 & 8 V., c. 44, § 9-11. 464  |
|                                | As to religious Worship in the Highlands, . . . . .                                         | 7 & 8 V., c. 44, § 12-15. 468 |

## IV. APPOINTMENT OF MINISTERS AND PATRONAGE.

|                            |                                                                                                                                                              |                                  |
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| <i>Patronage,<br/>etc.</i> | Right of Presentation restored to Lay Patrons, Appointment to Churches endowed by Voluntary Contribution to be as prescribed by the Church Courts, . . . . . | 10 Annae, c. 12. 431             |
|                            | Provision where Church built by Patron, or by Patron and Heritors jointly, . . . . .                                                                         | 4 & 5 W. IV., c. 41, § 1, 2. 457 |
|                            | As to Patronage of newly erected Parishes, . . . . .                                                                                                         | 4 & 5 W. IV., c. 41, § 3, 4. 458 |
|                            |                                                                                                                                                              | 7 & 8 V., c. 44, § 5. 461        |

## BOOK IV.

## THE LAW OF EVIDENCE.

## I. CITATION AND EXAMINATION OF WITNESSES.

|                                                                                                                                                                        | Page                                                                                              | Citation.                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|--------------------------|
| Courts of Law in England or Ireland, and Court of Session in Scotland, may issue Process to compel the Attendance of Witnesses although not within their Jurisdiction, | 17 & 18 V., c. 34, § 1.                                                                           | 489                      |
| Statement to be made at Foot of Writ that it is issued by special Order,                                                                                               | 17 & 18 V., c. 34, § 2.                                                                           | 489                      |
| Witnesses making Default to be punished by Courts of the Country in which the Process was served,                                                                      | 17 & 18 V., c. 34, § 3.                                                                           | 489                      |
| Persons not to be punished if it shall appear that sufficient Money has not been tendered to pay Expenses,                                                             | 17 & 18 V., c. 34, § 4.                                                                           | 490                      |
| Act not to prevent the issuing of a Commission to examine Witnesses,                                                                                                   | 17 & 18 V., c. 34, § 5.                                                                           | 490                      |
| Not to affect the Admissibility of Evidence where now receivable,                                                                                                      | 17 & 18 V., c. 34, § 6.                                                                           | 490                      |
| Certified Copy of Interlocutor fixing Trial to be Warrant for citing Witnesses,                                                                                        | 13 & 14 V., c. 36, § 43.                                                                          | 347                      |
| Diligence may be reported on Box Days,                                                                                                                                 | 13 & 14 V., c. 36, § 27.                                                                          | 348                      |
| Oaths, how to be administered in Jury Causes, Quakers or Moravians required to give Evidence may, instead of an Oath, make their solemn Affirmation, etc.,             | 55 G. III., c. 42, § 32.<br>9 G. IV., c. 32, § 1.<br>3 & 4 W. IV., c. 49.<br>3 & 4 W. IV., c. 82. | 148<br>476<br>478<br>478 |
| Persons who have formerly been Quakers or Moravians may make Affirmation in lieu of Oath, etc. Form of Declaration,                                                    | 1 & 2 V., c. 77, § 1.                                                                             | 480                      |
| Affirmation instead of Oath to be allowed in Civil Courts if Judge satisfied of Sincerity of Objection. Form of Affirmation,                                           | 18 V., c. 25, § 1.                                                                                | 491                      |
| Her Majesty may direct Provisions of this Act to be applied to all Courts in Scotland,                                                                                 | 18 V., c. 25, § 2.                                                                                | 491                      |
| Administration of Oath. Form,                                                                                                                                          | 1 & 2 V., c. 105.                                                                                 | 481                      |
| Witnesses may be examined not in Cross only, but in causa by the Parties against whom they are produced and sworn,                                                     | 3 & 4 V., c. 59, § 4.                                                                             | 482                      |
| Witness may be examined as to having made a different Statement. Evidence may be adduced to prove that he has made Statement,                                          | 15 V., c. 27, § 3.                                                                                | 487                      |
| Witness may be recalled after Examination on Motion of either Party,                                                                                                   | 15 V., c. 27, § 4.                                                                                | 487                      |
| Presence in Court not to disqualify Witnesses. Proviso as to Discretion of the Court,                                                                                  | 3 & 4 V., c. 59, § 3.                                                                             | 482                      |
| Authority of Court as to judicial Examinations,                                                                                                                        | 16 V., c. 20, § 6.                                                                                | 488                      |
| Examinations in Initialibus,                                                                                                                                           | 3 & 4 V., c. 59, § 2.                                                                             | 482                      |
| As to Witnesses refusing to Answer,                                                                                                                                    | 46 G. III., c. 37.                                                                                | 475                      |

## II. PROOF OF PARTICULAR FACTS.

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| Date of Bills or Notes may be proved by Parole,                                                                         | 19 & 20 V., c. 60, § 10. | 373 |
| Acceptance of Bill of Exchange must be in Writing,                                                                      | 19 & 20 V., c. 60, § 11. | 373 |
| All Bills drawn within the United Kingdom, etc., on any Party within the United Kingdom, etc., to be held Inland Bills, | 19 & 20 V., c. 60, § 12. | 374 |

*Bill of  
Exchange,  
etc.*

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|                                   | Notarial Protest not to be necessary except for the purpose of summary Diligence, . . .                                                                                                                                                                                                 | 19 & 20 V., c. 60, § 13. 374  |
|                                   | For Purposes of Recourse, Presentment and Dishonour may be proved by competent Evidence, written or parole, . . .                                                                                                                                                                       | 19 & 20 V., c. 60, § 13. 374  |
|                                   | Notice of Dishonour in case of Inland Bills to be given as in the case of Foreign Bills, . .                                                                                                                                                                                            | 19 & 20 V., c. 60, § 14. 374  |
|                                   | When Bill lost, stolen, or fraudulently obtained, Holder must prove Value given. Parole Evidence sufficient, . . .                                                                                                                                                                      | 19 & 20 V., c. 60, § 15. 374  |
|                                   | Holder of Bill or Note indorsed after Period of Payment to be subject to Objections, etc., .                                                                                                                                                                                            | 19 & 20 V., c. 60, § 16. 374  |
| <i>Consistorial Cases.</i>        | Provisions of this Act as to Examination of Party, or Husband or Wife of Party, not to apply to Cases of Adultery, Divorce, Breach of Promise, Declarator or Nullity of Marriage, Silence, Legitimacy, Bastardy, Adherence or Separation, . . .                                         | 16 V., c. 20, § 4. 488        |
|                                   | Act not to affect the Authority of Courts as to judicial Examination, . . .                                                                                                                                                                                                             | 16 V., c. 20, § 6. 488        |
|                                   | Witnesses abroad may be examined in Consistorial Causes by Commission, . . .                                                                                                                                                                                                            | 18 & 14 V., c. 86, § 26. 343  |
| <i>Damages. Privileged Cases.</i> | In Actions against Justices on account of Convictions, etc., Plaintiff not entitled to recover if proved that the Offence was committed, . . .                                                                                                                                          | 48 G. III., c. 141, § 2. 104  |
|                                   | In Actions for Breach of Promise of Marriage not competent to examine Parties, etc., as Witnesses, . . .                                                                                                                                                                                | 16 V., c. 20, § 4. 488        |
|                                   | (Divorce. See Consistorial Cases.)                                                                                                                                                                                                                                                      |                               |
| <i>Exchequer Suits.</i>           | Section 8 of 16 Vict., cap. 20, enabling the Parties to be examined as Witnesses, not to apply to Customs or Inland Revenue Cases, In Proceedings for Duties accruing in other Parts of the Kingdom, Evidence receivable in such Parts to be receivable in Scotland. (See above.) . . . | 19 & 20 V., c. 56, § 43. 68   |
|                                   |                                                                                                                                                                                                                                                                                         | 19 & 20 V., c. 56, § 40. 67   |
| <i>Foreign Law.</i>               | Courts in One Part of her Majesty's Dominions may remit a Case for Opinion in Law of a Court in any other Part thereof, . . .                                                                                                                                                           | 22 & 23 V., c. 63, § 1. 496   |
|                                   | Court whose Opinion is to be obtained may hear Parties or Counsel. Procedure, . .                                                                                                                                                                                                       | 22 & 23 V., c. 63, § 1. 496   |
|                                   | Opinion to be authenticated, and certified Copy given, . . .                                                                                                                                                                                                                            | 22 & 23 V., c. 63, § 2. 497   |
|                                   | Opinion to be applied by Court making the Remit. Procedure for that Purpose. Case may be remitted to Jury, . . .                                                                                                                                                                        | 22 & 23 V., c. 63, § 3. 497   |
|                                   | Her Majesty in Council or House of Lords on Appeal may adopt or reject Opinion, . .                                                                                                                                                                                                     | 22 & 23 V., c. 63, § 4. 497   |
|                                   | (Law. See Foreign and Res Judicata.)                                                                                                                                                                                                                                                    |                               |
|                                   | (Marriage, Declarator of. See Consistorial Cases.)                                                                                                                                                                                                                                      |                               |
| <i>Petitions.</i>                 | Lord Ordinary on Petitions may consult professional Person or Persons of Science or Skill, . . .                                                                                                                                                                                        | 20 & 21 V., c. 56, § 5. 406   |
|                                   | (Promissory Note. See Bill of Exchange.)                                                                                                                                                                                                                                                |                               |
| <i>Record.</i>                    | Authenticated Copy of judicial Proceedings to be furnished from the Record, . . .                                                                                                                                                                                                       | 50 G. III., c. 112, § 14. 117 |
| <i>Statute.</i>                   | Proof of Statute Law, . . .                                                                                                                                                                                                                                                             | 41 G. III., c. 90, § 9. 478   |

## III. ADMISSIBILITY OF EVIDENCE.

|                                                                                                                                                                        | Page                     | Parties. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|
| The Party whose Name is forged shall be a competent Witness in Prosecutions for Forgery.                                                                               | 9 G. IV., c. 32, § 2.    | 476      |
| Party to an Action may be adduced as a Witness unless it be shown that he has a substantial Interest.                                                                  | 15 V., c. 27, § 2.       | 486      |
| Section 2 of 15 & 16 Vict., cap. 27 [above], repealed.                                                                                                                 | 16 V., c. 20, § 1.       | 487      |
| Party to Action, or Husband or Wife of Party, not being accused in any criminal Proceeding, whether named in the Record or not, may be examined as a Witness.          | 16 V., c. 20, § 3.       | 488      |
| Act not to apply to Consistorial Actions or Actions for Adultery or Breach of Promise.                                                                                 | 16 V., c. 20, § 4.       | 488      |
| Adducing of Party as a Witness not to have Effect of Reference to his Oath.                                                                                            | 16 V., c. 20, § 5.       | 488      |
| The 3d Section of 16 Vict., cap. 20 [above], not to extend to Prosecution in Exchequer by the Customs or Excise.                                                       | 19 & 20 V., c. 56, § 48. | 68       |
| Every Punishment for Felony after it has been endured shall have the Effect of a Pardon under the Great Seal.                                                          | 9 G. IV., c. 32, § 3.    | 477      |
| No Misdemeanor except Perjury shall render a Party an incompetent Witness after he has undergone the Punishment.                                                       | 9 G. IV., c. 32, § 4.    | 477      |
| Conviction for a Crime (except Perjury or Subornation) not to disqualify Witness.                                                                                      | 1 W. IV., c. 37, § 9.    | 477      |
| Witness not to be excluded by reason of Conviction of Crime. Right to examine Witnesses as to Credibility not affected.                                                | 15 V., c. 27, § 1.       | 486      |
| Witnesses admissible notwithstanding Relationship to Party adducing them.                                                                                              | 8 & 4 V., c. 59, § 1.    | 482      |
| Presence in Court not to disqualify Witnesses in certain Cases. Proviso as to Exercise of judicial Discretion.                                                         | 8 & 4 V., c. 59, § 3.    | 482      |
| Witness not to be excluded by reason of Crime, Interest, Agency, partial Counsel, irregular Citation or Precognition. Right to examine as to Credibility not affected. | 15 V., c. 27, § 1.       | 486      |
| Not competent to adduce as a Witness any Person who shall be acting as an Agent in the Action.                                                                         | 15 V., c. 27, § 1.       | 486      |
| Where any Person adduced has been an Agent, no Plea of Confidentiality allowable.                                                                                      | 15 V., c. 27, § 1.       | 486      |
| So much of Section 1 of 15 & 16 Vict., cap. 27 [above], as to Incompetency of Persons who are Agents in Actions being Witnesses, repealed.                             | 16 V., c. 20, § 2.       | 487      |

Crime.

Other Grounds.

## IV. EXAMINATION OF WITNESSES AT THE INSTANCE OF ENGLISH OR FOREIGN TRIBUNALS.

|                                                                                                                                                 |                          |     |                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----|-----------------|
| Judges of Scotland or Ireland to whom Estate Bills may be referred by the House of Lords may examine Witnesses on Oath.                         | 41 G. III., c. 105, § 1. | 474 | House of Lords. |
| Lord Chancellor to have the same Powers for granting Commissions for taking Affidavits, etc., in Scotland and Ireland as he now has in England. | 6 & 7 V., c. 82, § 1.    | 483 | United Kingdom. |
| Persons wilfully swearing falsely in any Affidavit, etc., in Scotland, deemed guilty of Perjury, etc.                                           | 6 & 7 V., c. 82, § 2.    | 483 |                 |
| What Fees may be taken.                                                                                                                         | 6 & 7 V., c. 82, § 4.    | 484 |                 |

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|                        | For compelling the Attendance of Witnesses in United Kingdom by Application to Courts of Country where Commission is to be executed, . . . . .                                                                      | 6 & 7 V., c. 82, § 5. 484    |
|                        | Punishment of Persons disobeying Rule or Order to appear or to produce Writings or Documents required. Second Diligence, . . . . .                                                                                  | 6 & 7 V., c. 82, § 6. 485    |
|                        | Payment of Witnesses, etc., . . . . .                                                                                                                                                                               | 6 & 7 V., c. 82, § 7. 485    |
| <i>British Empire.</i> | Order for Examination of Witnesses out of the Jurisdiction in relation to any Suit pending before any Tribunal in her Majesty's Possessions. Procedure for Enforcement, etc., . . . . .                             | 22 V., c. 20, § 1. 494       |
|                        | Penalty on Persons giving false Evidence, . . . . .                                                                                                                                                                 | 22 V., c. 20, § 2. 495       |
|                        | Payment of Expenses of Witness, . . . . .                                                                                                                                                                           | 22 V., c. 20, § 3. 495       |
|                        | Power of Persons to refuse to answer Questions to criminate himself or to produce Documents, . . . . .                                                                                                              | 22 V., c. 20, § 4. 495       |
|                        | Certain Courts and Judges to have Authority under this Act, . . . . .                                                                                                                                               | 22 V., c. 20, § 5. 495       |
|                        | Power to Judges to frame Rules, etc., . . . . .                                                                                                                                                                     | 22 V., c. 20, § 6. 495       |
| <i>Foreign Courts.</i> | Judge having Authority under this Act may issue Order for Examination of Witnesses in this Country in relation to any civil or commercial Matter pending before a foreign Tribunal. Enforcement of Order, . . . . . | 19 & 20 V., c. 113, § 1. 492 |
|                        | Certificate of Ambassador, etc., sufficient Evidence in support of Application. Other Evidence admissible, . . . . .                                                                                                | 19 & 20 V., c. 113, § 2. 493 |
|                        | Examination of Witnesses to be taken upon Oath or Affirmation. Persons giving false Evidence guilty of Perjury, . . . . .                                                                                           | 19 & 20 V., c. 113, § 3. 493 |
|                        | Payment of Expenses to Witness, . . . . .                                                                                                                                                                           | 19 & 20 V., c. 113, § 4. 493 |
|                        | Persons to have Right of Refusal to answer certain Questions and to produce Documents, . . . . .                                                                                                                    | 19 & 20 V., c. 113, § 5. 493 |
|                        | Certain Courts and Judges to have Authority under this Act. Court of Session to have Authority, . . . . .                                                                                                           | 19 & 20 V., c. 113, § 6. 493 |



## GENERAL INTERPRETATION ACTS.

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### 1<sup>o</sup> VICTORIÆ REGINÆ.

#### CAP. XXXIX.

*An Act to interpret the Words "Sheriff," "Sheriff Clerk," "Shire," "Sheriffdom," and "County," occurring in Acts of Parliament relating to Scotland.—[12th July 1837.]*

[This and the following Act are printed, because their Provisions may be held to be incorporated with all subsequent Acts in which the interpreted words occur. This Act is also retrospective.]

**W**HEREAS it is expedient that the Words "Sheriff," "Sheriff Clerk," "Shire," "Sheriffdom," and "County," used in Acts of Parliament relating to *Scotland*, should be interpreted in Manner hereinafter mentioned: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases in which the Words "Sheriff," "Sheriff Clerk," "Shire," "Sheriffdom," and "County," occur in any existing Act of Parliament, or shall occur in any future Act, relating to *Scotland*, the Word "Sheriff" shall be deemed and taken to comprehend and apply to any Steward, the Words "Sheriff Clerk" to comprehend "Steward Clerk," and the Words "Shire," "Sheriffdom," and "County" to comprehend and apply to any Stewartry in *Scotland*, excepting where otherwise specially provided, and excepting Cases in which there is anything in the Subject or Context repugnant to such Meaning and Application.

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Interpretation of the Words "Sheriff," "Sheriff Clerk," etc., in Acts relating to *Scotland*.

### 13<sup>o</sup> VICTORIÆ REGINÆ.

#### CAP. XXI.

*An Act for Shortening the Language used in Acts of Parliament.—[10th June 1850.]*

[See 1 V., c. 39.]

**B**E it declared and enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and

*Interpretation, etc.*

Acts of Parliament may be altered, etc., in the same Session.

Acts of Parliament to be divided into Sections, without introductory Words.

Where any Act is referred to it shall be sufficient to cite the Year of the Reign, Chapter, and Section, etc.

Interpretation of certain Words for future Acts.

Repealed Acts not to be revived in virtue of the Repeal of the repealing Act.

Repealed Provisions of any Act to remain in force until the substituted Provisions come into force.

Acts to be deemed public Acts.

Commencement of Act.

by the Authority of the same, That every Act to be passed after the Commencement of this Act may be altered, amended, or repealed in the same Session of Parliament, any Law or Usage to the contrary notwithstanding.

II. Be it enacted, That all Acts shall be divided into Sections, if there be more Enactments than One, which Sections shall be deemed to be substantive Enactments, without any introductory Words.

III. Be it enacted, that in any Act, when any former Act is referred to, it shall be sufficient, if such Act was made before the Seventh Year of *Henry* the Seventh, to cite the Year of the King's Reign in which it was made, and where there are more Statutes than One in the same Year the Statute, and where there are more Chapters than One the Chapter; and if such Act referred to was made after the Fourth Year of *Henry* the Seventh, to cite the Year of the Reign, and where there are more Statutes or Sessions than One in the same Year the Statute or the Session (as the Case may require), and where there are more Chapters or Sections than One the Chapter or Section or Chapter and Section (as the Case may require), without reciting the Title of such Act, or the Provision of such Section, so referred to; and the Reference in all Cases shall be made according to the Copies of Statutes printed by the Queen's Printer, or to the Copies thereof contained in the Reports of the Commissioners of Public Records: Provided that where it is only intended to amend or repeal any Portion only of such Section it shall be necessary still either to recite such Portion or to set forth the Matter or Thing intended to be amended or repealed.

IV. Be it enacted, That in all Acts Words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided; and the Word "Month" to mean Calendar Month, unless Words be added showing Lunar Month to be intended; and "County" shall be held to mean also County of a Town or of a City, unless such extended Meaning is expressly excluded by Words; and the Word "Land" shall include Messuages, Tenements, and Hereditaments, Houses and Buildings, of any Tenure, unless where there are Words to exclude Houses and Buildings, or to restrict the Meaning to Tenements of some particular Tenure; and the Words "Oath," "swear," and "Affidavit" shall include Affirmation, Declaration, affirming, and declaring, in the Case of Persons by Law allowed to declare or affirm instead of swearing.

V. Be it enacted, That where any Act repealing in whole or in part any former Act is itself repealed, such last Repeal shall not revive the Act or Provisions before repealed, unless Words be added reviving such Act or Provisions.

VI. Be it enacted, That wherever any Act shall be made repealing in whole or in part any former Act, and substituting some Provision or Provisions instead of the Provision or Provisions repealed, such Provision or Provisions so repealed shall remain in force until the substituted Provision or Provisions shall come into Operation by force of the last made Act.

VII. Be it enacted, That every Act made after the Commencement of this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act.

VIII. Be it declared and enacted, That this Act shall commence and take effect from and immediately after the Commencement of the next Session of Parliament.



BOOK I.

---

THE COURT OF SESSION

AS THE

COURT OF EXCHEQUER

IN SCOTLAND.





# THE PUBLIC GENERAL STATUTES

RELATING TO

## THE COURT OF EXCHEQUER

IN

### SCOTLAND.

*Abbreviations used in the Marginal Column.—*

*Am.* = amends; *Am. by* = amended by;

*Ext.* = extends; *Ext. by* = extended by;

*Rep.* = repeals; *Rep. by* = repealed by.

6° ANNÆ REGINÆ.

CAP. XXVI.

*An Act for Settling and Establishing a Court of Exchequer in the North part of Great Britain called Scotland.*

[So far as relates to Practice, the Provisions of this Act are repealed by 19 & 20 V., c. 56.—By 48 G. 3, c. 145; 11 G. 4 & 1 W. 4, c. 69; 2 W. 4, c. 54; 5 & 6 W. 4, c. 46, and 2 & 3 V., c. 36, various alterations were made in the constitution of this Court. As to Procedure before the Barons of Exchequer, see Rules of Procedure and Additional Rules of Procedure: (Scrope's Hist. View, App.) See also Minutes of Court, 8 Geo. 2; 55 G. 3, and 3 G. 4. (Id. vol.)]  
5 Anne, c. 8.

**W**HEREAS in and by the Nineteenth Article in a late Act of Parliament made in the Fifth Year of her now Majesty's Reign, intituled, *An Act for an Union of the Two Kingdoms of England and Scotland*, it is, amongst other Things, provided, That there should be a Court of Exchequer in *Scotland* after the said Union, for deciding Questions concerning the Revenues of Customs and Excise there, having the same Power and Authority in such Cases as the Court of Exchequer has in *England*, and that the said Court of Exchequer in *Scotland* have Power of passing Signatures, Gifts, Tutories, and in other Things, as the Court of Exchequer in *Scotland* then had, and that the Court of Exchequer that then was in *Scotland* should remain until a new Court of Exchequer be settled by the Parliament of *Great Britain*, in *Scotland* after the Union, which Union took effect upon the First Day of *May*, in the Sixth Year of her now Majesty's Reign, One thousand seven hundred and seven, and thereby the said Two Kingdoms of *England* and *Scotland* became united into One Kingdom, by

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A Court of Exchequer erected in Scotland to be a Court of Record ; for ever.

the name of *Great Britain* ; To the intent therefore that there may be a Court of Exchequer settled and established in *Scotland*, pursuant to the Purport and Meaning of the said recited Act, and of the Nineteenth Article therein contained ; Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of *May*, One thousand seven hundred and eight, a Court of Exchequer, to be called and known by the Name of *The Court of Exchequer in Scotland*, shall be, and by Authority of this Act is hereby erected, constituted, and established in and for that part of *Great Britain* called *Scotland*, and that the said Court of Exchequer shall be and is hereby enacted to be a Court of Record, Revenue, and Judicature for and within *Scotland*, and to have continuance for ever, and to be held within the City of *Edinburgh*, at such Place or Places where the former Exchequer of *Scotland* before the said Union was usually held, or at such other Place or Places in *Scotland* as by Authority from the Queen's Majesty, her Heirs or Successors, and in default thereof, by the Judges of the said Court of Exchequer for the time being, shall from Time to Time be directed, limited, or appointed.

Lord Treasurer, and such others as Queen shall appoint to be Chief Baron and Barons of the Exchequer, shall be Judges of the said Court ;

II. And it is further enacted by the Authority aforesaid, That the Lord High Treasurer of *Great Britain* for the Time being, and such other Person and Persons as by Commissions from the Queen's Majesty, her Heirs and Successors, under the Seal which by the said Articles of Union is appointed to be kept in *Scotland*, from Time to Time, shall be ordained, constituted, or appointed to be the Chief Baron, and other Barons of the said Court of Exchequer in *Scotland*, shall be the Judges of and in the said Court ; and the said Lord High Treasurer and Barons, and the said Barons, in the absence of the Lord High Treasurer, shall have and put in Execution all and every the judicial and other Powers and Authorities of or belonging, or which shall or may appertain or belong to the said Court, or wherewith the said Court shall be invested, and the said Barons shall remain and have continuance in their respective Offices and Places quam diu se bene gesserint ; which Barons of the Exchequer are to be made of such as have been, are, or shall be Serjeants at Law, or Barristers of Law of Five Years standing in some of the four Inns of Court in *England*, or else of such Persons as shall have been, are, or shall be Advocates in the College of Justice in *Scotland* for Five Years ; and the said Barons of the Exchequer in *Scotland* shall respectively take the same Oaths of Office mutatis mutandis,

And take the same Oaths of Office as the Barons in *England* ;

and other Oaths, as the Barons of the Court of Exchequer in *England* have used, or ought to take, upon their Admissions into their respective Offices, the said Oaths to be taken for the first Time before the Court of Session in open Court in case the said Court be sitting, or otherwise, in case the said Court be not then sitting, before any Three of the Lords of Session, and at all Times hereafter before the said Court of Exchequer; and the said Chief Baron and Barons shall use and wear such Robes and Habits as the Chief Baron and Barons of the Court of Exchequer in *England* do use and wear, or such other Robes or Habits as her Majesty, her Heirs or Successors, shall appoint.

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And wear such  
Robes, etc.

III. And it is further enacted by the Authority aforesaid, That there shall be in the said Court of Exchequer in *Scotland* the several Offices following; that is to say, The Office of Queen's Remembrancer, the Office of Lord Treasurer's Remembrancer, the Office of Clerk of the Pipe, and such other Offices now in being in the Court of Exchequer in *England*, or are now in being in *Scotland*, relating to Signatures, Gifts, and Tutories, as the Queen's Majesty, her Heirs and Successors, shall from Time to Time think fit and proper, to be constituted and appointed under the Seal which by the said Articles of Union is appointed to be kept in *Scotland*; and that such Persons shall be the Masters or chief Officers of and in the said respective Offices, and for such Term, Estate, and Interest therein as the Queen's Majesty, her Heirs and Successors, shall from Time to Time by Letters Patents, under the Seal aforesaid, ordain or appoint, and that the said Masters or chief Officers of the aforesaid several Offices shall have and appoint from Time to Time under them, and in their respective Offices, such and so many Attorneys and Clerks as shall be fit and proper for the Business in their respective Offices; which said Masters and chief Officers, as also the said Attorneys and Clerks, shall, before their Admissions into their Offices or Places respectively, take such Oath or Oaths in the said Court, or before the Chief Baron or one of the Barons of the said Court, for their faithful and honest Carriage and Behaviour in their said Offices respectively, as the like Officers, Attorneys, and Clerks in the Court of Exchequer in *England* have used and ought to do, or as by the Barons of the said Court of Exchequer in *Scotland* shall for that Purpose be devised and appointed.

Other Offices to be  
in the said Court.

IV. Provided, nevertheless, That the said several chief Officers in the respective Offices aforesaid, as also the said Attorneys, Clerks, and other Officers of or belonging to the said Court of Exchequer in *Scotland* for the Time being, shall all of them be subject and obedient to the said Court of Exchequer, and may be suspended, punished, or amoved

Officers may be  
punished.

*Constitution of Court.*

by the said Court, for neglect of Duty, or for Crimes and Misdemeanors in their respective Offices and Places, or other just Causes.

*Seal for the Court.*

V. And be it further enacted by the Authority aforesaid, That there shall be a Seal to be assigned or appointed by the Queen's Majesty, her Heirs and Successors, for the sealing all such Letters Patents, Grants, Commissions, Writs, Precepts, and other Process and Proceedings which shall issue out of or be awarded by the said Court of Exchequer in *Scotland*, or ought or shall be directed to pass under the Seal of the said Court; which Seal shall be kept in the Custody of the Chief Baron of the said Court of Exchequer in *Scotland* for the Time being; and the said Chief Baron, or such Person or Persons as he shall depute, and for whom he will be answerable, shall therewith seal all Letters Patents, Grants, Commissions, Writs, Precepts, and other Process and Proceedings before-mentioned, which shall be brought to be sealed, and for that purpose shall attend at proper and convenient Times and Places to be directed by the said Court of Exchequer in *Scotland*, or any of the Barons thereof (in case any question shall arise touching the same); and the said Court of Exchequer in *Scotland* is hereby impowered from Time to Time to depute and appoint all such other Officers, Ministers, Clerks, Servants and Attendants, for the constituting of which there is no other Provision made by this Act, as shall be thought convenient for the Use and Service of the said Court, and for the carrying on and Dispatch of the Business therein, subject and liable nevertheless to be suspended, punished, and amoved, and to the taking of such Oaths, mutatis mutandis, for the faithful Execution of their respective Offices, Places, and Employments, as herein-before is provided for any the Officers, Attorneys, or Clerks in the said Court of Exchequer in *Scotland*; and all and every the Sheriffs by themselves, or their sufficient Deputies for whom they are to be answerable, and other Officers, Ministers, and Subjects in *Scotland*, are hereby enjoined and required to be from Time to Time aiding, assisting, obedient to, and attendant upon the said Court of Exchequer in *Scotland*, and the Judges and Jurisdiction thereof, in all things relating to the said Court of Exchequer, which do, may, or shall any ways touch or concern their respective Offices or Duties in any manner of wise; and shall be liable and subject to such Penalties and Punishments for neglect of their Duties, or for any Contempts or Disobedience to the said Court, or the Process thereof, or for any other Neglect, Contempt, or Offence, as shall be set or imposed upon them respectively by the said Court of Exchequer.

*Chief Baron to keep the same.**Court may constitute other Officers.*

*Rep. by 1 V., c. 65, § 3.*

*All Sheriffs to be attendant.*

*19 & 20 V., c. 56, § 29, etc.*

VI. And be it further enacted by the Authority aforesaid, That all and every the Revenues and Duties of Customs and Excise, and all and every other the Revenues, Debts, Duties, and Profits, of what Nature or Kind soever, any ways appertaining or which hereafter shall appertain to the Queen's Majesty, her Heirs or Successors, within *Scotland*, either as Queen of *Great Britain* or as Prince and Steward of *Scotland*, and all Honors, Castles, Manors, Lands, Tenements, and Hereditaments in *Scotland*, which now do or hereafter shall appertain to the Queen's Majesty, her Heirs or Successors, by Force or Virtue of any Attainder, Outlawry, Seizure for any Crime or Cause of Forfeiture, Debt or Duty, or upon any Extent, Commission, or otherwise, or by Force and Virtue of the Royal Prerogative, or by any other Right or Title whatsoever, and all and every the Rents, Issues, and Profits thereof, or of any of them, and also all and every the Goods, Chattels, Debts, Credits, Rights, Titles, and personal Estates within *Scotland*, any ways accruing or belonging, or which hereafter shall belong to the Queen's Majesty, her Heirs and Successors, by Force or Virtue of the Royal Prerogative, or of any Attainder, Outlawry, Extent, Inquisition, Debt, Duty, or Forfeiture, or by any other Right, Title, Ways or Means whatsoever, and all the Remedies and Means for the recovering the same, or the Possession thereof, and all Accounts relating thereto, and also all and every Forfeitures and Penalties which have been incurred, or shall or may incur or become any ways due and payable in *Scotland*, by Force or Virtue of any Law or Statute, touching or relating to the Customs or Excise, or by Force or Virtue of any penal or other Laws or Statutes whatsoever, and also all Fines, Issues, Forfeitures or Penalties, of what Nature or Kind soever, happening, arising, or accruing to the Queen's Majesty, her Heirs or Successors, within *Scotland*, and all Informations, Actions, Suits, or Demands, and also all Obligations, Recognizances, Specialties, and other Securities, touching or concerning the before-mentioned Matters and Things, and all Prosecutions, Remedies, and Accounts, for or concerning the same or other the Premises, shall be within the Jurisdiction and Authority of the said Court of Exchequer in *Scotland*, and hereby are annexed to the said Court; and the Barons of the said Court for the Time being shall have and exercise, and by Virtue of this Act are and shall be invested with all Powers, Authorities, and Jurisdictions, as well judicial as otherwise, for the hearing and determining of all Actions, Suits, and Questions in Law or Equity, touching the aforesaid Revenues, Honors, Castles, Manors, Lands, Tenements, Goods, Chattels, Debts, Duties, Forfeitures, Penalties, Profits, and all

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Its Jurisdiction.  
19 & 20 V., c. 56,  
§ 1.  
2 W. 4, c. 54.

Power vested in  
Barons.

*Jurisdiction  
and  
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other Matters or Things herein before-mentioned, and annexed to the said Court of Exchequer in *Scotland*, or the Jurisdiction thereof; and that the said Court of Exchequer in *Scotland* shall and may act, do, and proceed therein and thereupon in every respect whatsoever as by Law, or as the Court of Exchequer in *England*, by the Constitution, Course, or Practice of or in the said Court, hath been or is enabled, or hath used or practised to do in the like Cases in *England*, and upon and in all such Informations, Actions, Suits or Demands, or touching or concerning any the Premises, or any the Proceedings thereupon, shall and may make all such Orders and Rules, and direct, award and issue all such Writs, Precepts, Process, and Methods of Proceedings, as hath or have been, is, are or may be done or practised in the same or like Cases in the Court of Exchequer in *England*; all which Informations, Actions, Suits, and Prosecutions, Process and Proceedings relating thereto, or to any the Premises, shall be had, made, and done in the Office of the Remembrancer of the Queen's Majesty, her Heirs or Successors, in the said Court of Exchequer in *Scotland*; and the said Barons of the Court of Exchequer in *Scotland* are hereby authorized and required, in Case of any Neglect or Default by any the Plaintiffs or Defendants in any the said Informations, Actions, or Suits, or in any other Informations, Actions, or Suits which shall be commenced, sued, or prosecuted in the said Court of Exchequer in *Scotland*, for any Matter or Cause whatsoever, within the Jurisdiction of the said Court, to give and cause Judgments to be entred against any the Parties making Default, to plead or proceed to Trial, and for Recovery and Condemnation of any Goods, Chattels, or other Things seized as forfeited, and for which no Claim shall be duly entred, and to give and cause Judgments to be entred in Cases of Demurrers joined in any the said Causes depending before them, and to do, act, and proceed in and about all and every the Premises as fully, to all Intents and Purposes, as the Barons of the Court of Exchequer in *England*, by Law, or by the Course and Method of Proceedings in that Court, should, or might, or could do, or order to be done in such or the like Cases, Matters, or Things, in Case the same were or should be depending in the said Court of Exchequer in *England*; and upon any Issues joined in any the said Causes, or in any other Causes triable in the said Court upon Matters of Fact, or which would be triable or enquirable by Juries (if the same were in *England*), the Barons of the Exchequer in *Scotland* are hereby authorized and required to cause the same to be tried, either at the Bar of the said Court, or elsewhere, at such Times and Places as shall be for that Purpose

Causes triable by  
Juries.  
19 & 20 V., c. 56,  
§ 6.



by the Court appointed, by a Jury of Twelve Persons of that County, Shire, City, or Place in *Scotland*, where the said Matters in issue to be tried did arise, or of such other County, Shire, City, or Place in *Scotland* where the said Court of Exchequer shall order or direct the same to be laid and tried; each of which Jurymen shall at the Time of such Trial have and be seized in his own Right, or Right of his Wife, of Lands or Tenements of an Estate of Inheritance, or for his or her Life, within the County, Shire, City, or Place from whence the Jury is to come, of the yearly Value of Five Pounds at the least, or shall be then worth, in Goods, Chattels, and personal Estate, the Sum of Two hundred Pounds Sterling at least, and for want thereof, or for any other just and reasonable Cause, shall be subject to be challenged and set aside; and in all Verdicts to be given by the Juries the whole number of Twelve must agree: And the said Barons of the Court of Exchequer in *Scotland*, and such of them before whom any such Trials shall be, or shall be appointed to be, shall, by Virtue of this Act, have full Power and Authority to proceed to such Trials, and to make, award, and issue all such Orders, Rules, Writs, and other Process, and do or cause to be done all other Acts, Matters, and Things, of what Nature soever, as well in Order to any such Trials and Notices for the same, as in, upon, and after the said Trials, in every respect whatsoever, whether with relation to Sheriffs and other Officers, Parties, Jurors, Witnesses, Challenges, or other Matters or Proceedings in, about, or relating to any such Trials, or the Verdicts to be taken thereupon, or Nonsuits therein, and have, and execute as fully and amply, to all Intents and Purposes, all Powers, Authorities, and Jurisdictions relating to or proper for any such Trials, or the Matters for which such Trials shall or ought to be, in every respect whatsoever, and for awarding Costs upon the Account of any such Trials, or for not proceeding to Trial, and for awarding any new or other Trials, as the Barons of the Court of Exchequer in *England*, or any of them, before whom any Trials, either at the Bar or otherwise, have been or should have been by the Laws of *England*, or by the Constitution, Power, or Practice of the said Court of Exchequer in *England*, or by Virtue of any Law or Statute, Commission or Authority whatsoever, hath or have been, is or are enabled, or have used to make, do, or execute in or concerning any such or the like Trials or Cases in *England*; and after any such Trials had, the said Barons of the said Court of Exchequer in *Scotland*, and the Officers, Attorneys, and Clerks in the said Court, shall and are hereby enabled and required to give Rules, and do all other Things in Order for Judgments

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and  
Procedure.*

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to be entred in the said Court of Exchequer in *Scotland*, upon the Records of Trials at Bar, and of the Returns of Records of Nisi Prius, in Case of Trials in the Countries, as are, have been, or may be used or practised in like Cases in the Court of Exchequer in *England*; and the Barons of the said Court of Exchequer in *Scotland* may and shall proceed to give Judgment according to the Right of the Causes, and to award Executions upon such Judgments, and to do and award all and every Act, Matter, and Thing touching and relating to any such Trials, Judgments, or Executions as by Law, or the Rules, Orders, or Directions of the Court of Exchequer in *England*, or by the Laws or Statutes in *England*, or hath or have been or ought to be used in such or the like Cases.

Barons, in or out of Court, to take Recognizances for Debts, etc.

*Am. by 19 & 20 V., c. 56, § 37.*

VII. And it is hereby further enacted and declared by the Authority aforesaid, That the said Barons of the Court of Exchequer in *Scotland*, or any One or more of them, either in Court or out of Court, shall have full Power and Authority to take all Manner of Recognizances and Securities for Debts, and that all Obligations, Recognizances, Specialties, and other Securities for any the Revenues, Rents, Debts, Duties, Accounts, Profits, or other Things accruing, or which shall or may become due or accrue to the Queen's Majesty, her Heirs or Successors, within *Scotland*, or which shall in any wise concern or relate thereto, or any the Officers, Ministers, or Accountants thereof, or for the same, or which shall be taken in or by the Order of the said Court of Exchequer in *Scotland*, or upon any other Account, for the Use or Benefit of the Crown, or for securing any the Revenues, Debts, or Duties of the Crown, shall be taken in the Name of the Queen's Majesty, her Heirs and Successors, and to be paid to the Queen's Majesty, her Heirs and Successors, with other proper Words, and with and under such Conditions as shall be suitable to the Matter for which they shall be taken, and shall have the full Force and Effect of any Obligations, Recognizances, and Specialties, which have been or may be taken or acknowledged in the Court of Exchequer in *England*, according to the Purport, true Intent and Meaning of the Statute in that Behalf made in *England*, in the Three and thirtieth Year of the Reign of King *Henry* the Eighth, or any other Law or Statute, or any Practice, Custom, or Usage in the Court of Exchequer in *England*, or by Virtue of the Royal Prerogative; and that all Suits and Prosecutions upon any the said Obligations, Recognizances, and Specialties, or for any Revenues, Debts, or Duties any ways due or payable to the Queen's Majesty, her Heirs and Successors within *Scotland*, shall be in the said Court of Exchequer in *Scotland*, and her Majesty, her Heirs and

33 Hen. 8, c. 39.

All Suits, etc., thereupon to be in Exchequer Court.

*See 19 & 20 V., c. 56, § 38, etc.*

Successors, shall be preferred and have Preference in all Suits and Proceedings in the said Court of Exchequer in *Scotland*, according to the said Statute of the Three and thirtieth Year of King *Henry* the Eighth, and according to the Usage, Course, and Practice of the Court of Exchequer in *England*, and shall have and enjoy such and the same Prerogatives, as well in and about Pleadings and in all other Matters and Things, as by any the Laws in *England*, or Course of Exchequer in *England*, have been, are, or ought to be allowed, and as well the Bodies as the Lands and Tenements, Debts, Credits and Specialties, Goods, Chattels, and personal Estate of all Debtors or Accountants to the Crown, or their Debtors in *Scotland*, shall be subject and liable, and shall and may be made subject and liable by Extent, Inquisition, and Seizures, or by any other Process, Ways, or Means, to the Payment of such Debts, Duties, or Revenues to the Crown, and in such and the same Manner and Form, to all Intents and Purposes, as hath been or is used in the Court of Exchequer in *England* in like Cases.

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VIII. Provided nevertheless, That no Debt or Duty from any the Debtors or Accountants to the Crown in *Scotland* shall affect or subject any real Estate in *Scotland* of any such Debtors or Accountants to the Payment or Satisfaction of any such Debt or Duty, further or otherwise, or in any other Manner or Form, than such real Estate may or ought to be subject and liable thereto by the Laws of *Scotland*; and that the Laws of *Scotland* shall, in all such Cases, and for all such Purposes, hold place and be observed; anything in this Act contained to the contrary notwithstanding: And for all the Purposes in this Act mentioned, the said Court of Exchequer in *Scotland*, and the Barons and other Officers thereof and therein, shall have, exercise, and put in Execution within *Scotland*, all and every the Powers, Authorities, and Jurisdictions, as to all Matters and Things whatsoever, arising or happening, or which have or shall arise and happen within *Scotland*, touching or concerning any the aforesaid Revenues or Duties of Customs and Excise, and other Revenues, Debts or Duties, Obligations, Securities, Judgments, or Specialties, or the Recovery of the same, or of any other the Premises which the Court of Exchequer in *England*, or the Barons or Officers thereof, by Virtue of the said Statute made in *England*, in the said Three and thirtieth Year of the Reign of King *Henry* the Eighth, or of any other Statute made and in Force in *England*, or by the Constitution, Course, or Practice used in the Court of Exchequer in *England*, have or ought to have performed or put in Execution in *England*, as fully and amply, to all

No Debt, etc., to the Crown in *Scotland* to subject any real Estate there otherwise than by the Laws of *Scotland*.

*Limits* 33 H. 8. c. 39, & 7 Jac. 1. c. 15.

*Infra*, § 22.

Barons, etc., to execute the Powers hereby granted.

Procedure.

Intents and Purposes, as if the same Powers, Authorities, and Jurisdiction were in this Act particularly expressed and thereby enacted; yet so, nevertheless, that nothing be done to make the real Estate in *Scotland*, of any Debtor or Accountant to the Crown there, subject or liable to the Payment of any Debts or Duties to the Crown, farther or otherwise than they may or ought to be by the Laws of *Scotland*, according to the Purport of the Proviso last herein before-mentioned: And the Barons of the said Court of Exchequer in *Scotland* shall and may act and do in respect to any the Parties in Law or Equity to any Action, Information, Suit, or Prosecution in the said Court of Exchequer in *Scotland*, in such Cases, Sort, and Manner as by any the Laws or Statutes in *England*, or the Use and Practice of the Court of Exchequer there, touching the awarding of Costs, and issuing Process and Execution for the same, hath or have used to be done.

All Statutes in England of Jeofails, etc., to extend to all Actions brought in Court of Exchequer in Scotland, etc.

Four Terms to be kept every Year; 19 & 20 V., c. 56, § 3, 26.

During which Barons to hear and determine Causes, etc.;

IX. And be it further enacted by the Authority aforesaid, That the several Statutes in *England* of Jeofails, and for Amendments, shall extend to all such Actions, Informations, and Suits, to be brought in the Court of Exchequer in *Scotland*, for the recovery of any Debt, Duty, or Revenue due to the Crown, as fully and amply, to all Intents and Purposes, as they do or ought to extend to the Court of Exchequer in *England*, or any Causes or Proceedings therein in such or the like Cases: And that in the said Court of Exchequer in *Scotland*, there shall be kept and observed Four Terms in every Year, whereof One of them shall be called *Martinmas-Term*, and shall yearly commence upon the Third Day of *November*, and end on the Twentieth Day of *November*; and another of them shall be called by the Name of *Candlemas-Term*, and shall yearly commence upon the Twenty-third Day of *January*, and end upon the Twelfth Day of *February* yearly; and another of them shall be called by the Name of *Whitsuntide-Term*, and shall yearly commence upon the Twenty-fifth Day of *May*, and shall end on the Fifteenth Day of *June* following; and the Fourth of them shall be called by the Name of *Lammas-Term*, and shall yearly commence on the Twentieth Day of *July*, and shall end on the Eighth Day of *August* following: And if any of the said Days on which any of the said Terms shall begin or end shall happen to be a Sunday, then such Term respectively shall begin or end the next Day following; in and during which Terms the Barons of the said Court shall sit therein, and hear and determine the Business, Causes, Matters and Things depending, or which shall, may, or ought to be prosecuted in the said Court either in Law or Equity, or which shall or may concern the

Revenues, Debts, Duties, Matters or Things within the Jurisdiction of the said Court, and that either with or without any Adjournment to or for any Time or Place: And that the said Barons shall and may order and appoint the Days and Times for the Returns of Writs or Process issuing out of and returnable in the said Court, and set and impose upon all such Sheriffs, and other Officers and Persons, Bodies-Politick or Corporate, to whom the Execution of such Writs or Process do or shall appertain, such Issues, Fines, Amerciaments, and Penalties, as to the said Court shall seem fit and reasonable: And the said Barons in Court, or any of them out of Court, shall take Bails, Recognizances, and other Securities, Informations, Bills, Answers and Affidavits, and take and declare Accounts, and do and execute all Matters and Things relating to the Business or Jurisdiction of the said Court, as fully, to all Intents and Purposes, as the Barons of the Exchequer in *England*, or any of them, have or do use in such or the like Cases in or out of Court there: And the Barons of the Court of Exchequer in *Scotland* are hereby also authorized and enabled to hold Plea in Equity by *English* Bill, Petition, or Suit to be brought or exhibited in the said Court by or against the Attorney or Advocate-General of the Queen's Majesty, her Heirs and Successors, on her or their Behalf, or for her or their Interest, or by or against any other Person or Persons any ways concerned in or about any the Revenues, Debts, or Duties before-mentioned, touching the said Revenues, Debts, or Duties, for any Discovery or Relief in Equity: And in and upon such Bills, Petitions, and Suits, the said Court of Exchequer shall and are hereby enabled to issue and award Process of Subpœna or Distringas, and all other usual and proper Process for compelling the Parties, Defendants to or in such Suits, to put in their Answers, and make their Defences to such Bills, Petitions, or Suits, and for the Parties to such Suits to proceed therein and thereupon according to such Rules or Orders, and in such Manner and Form as the Court of Exchequer in *England* hath used to proceed by; and upon Issues joined in any the said Causes or Suits in Equity, the Court of Exchequer in *Scotland* is to cause Witnesses to be examined (if desired) on either side by Commissions to be awarded for that Purpose, or by sworn Examiners, and after Publication of the Depositions of the Witnesses, to proceed to the hearing of the said Causes; and upon the Proofs and Evidence therein or thereupon, or upon Bill and Answer, where no Witnesses shall be examined or Proofs made, to make such Orders and Decrees either for the Relief of the Plaintiffs, or for directing any Issue or

Equity Jurisdiction.

And appoint Days and Times for Returns of Writs;

And take Bails, etc.;

And hold Plea in Equity by *English* Bill, etc.;

And award Process thereon;

And make Orders and Decrees.

*Extrajudicial  
Functions.**Authorizes Writs  
of Mandamus,  
Injunction, etc.*

Barons to enjoy  
the same Privileges  
as Members of the  
College of Justice,  
etc.

All Officers of the  
Revenues in Scot-  
land to be subject  
to the Jurisdiction  
of the Court of  
Exchequer.

Issues at Law to be tried for the Information of the Conscience of the Court, or for dismissing of the said Plaintiff's Bills, or otherwise, as to the said Court shall seem just and reasonable, and as is or hath been used in the Court of Exchequer in *England*; save only that all Issues at Law directed, as aforesaid, for the Information of the Conscience of the Court, shall be and are hereby ordered to be made up and proceeded upon in the said Queen's Remembrancer's Office in *Scotland*, in such Manner as such Issues are used to be made up and proceeded upon in the Office of Pleas in the Court of Exchequer in *England*; and the said Court shall award such Process for the enforcing any of the Parties to such Suits to perform and yield Obedience to such Orders or Decrees as shall be made in the said Causes; and in case of Non-performance thereof, or Disobedience thereunto, the said Court shall award all such Process of Contempt against the Persons and Estates of him, her, or them that shall be in Contempt, or refuse Obedience to any the said Orders or Decrees, as hath been used and practised in like Cases in or by the Court of Exchequer in *England*, and make and execute like Process, Orders, and Proceedings thereupon, as are used in the Court of Exchequer in *England* in like Cases.

X. And be it further enacted by the Authority aforesaid, That the Barons of the Court of Exchequer in *Scotland*, and all and every the Officers and Members of the said Court of Exchequer, shall be entitled to, and have and enjoy such and the same Privileges and Immunities as the Members of the College of Justice have and enjoy by the Law, Custom, and Practice in *Scotland*, excepting only that they may be pursued in Justice before the Lords of Session, for Causes not competent to the Court of Exchequer.

XI. And be it further enacted by the Authority aforesaid, That all the Officers and Persons employed or to be employed in or about the collecting, receiving, managing, paying, answering or accounting for any the Revenues or Duties of Customs or Excise, or other Crown Revenues, Debts, or Duties in *Scotland*, shall be under and subject to the Rules, Orders, Directions, Authority, Power, and Jurisdiction of the said Court of Exchequer in *Scotland*, in all things touching the said Revenues, Debts, Duties, or Accounts, and touching the collecting, ordering, and Management thereof, and the paying and answering the same, and concerning any Securities to be given, or Oaths to be taken relative thereto, which are not or shall not be contrary to, or inconsistent with the Commands, Orders, and Directions in Force, of or from the Queen's Majesty, her Heirs or

Successors, or of or from the Lord High Treasurer of *Great Britain*, or the Lords Commissioners of the Treasury in *Great Britain* for the Time being; and that all and every such Person and Persons as is, or are, or shall be appointed under the aforesaid Seal, which by the Articles of Union is appointed to be kept in *Scotland*, to be the Auditor or Auditors of the said Revenues of Customs or Excise, or other Crown Revenues or Duties whatsoever in *Scotland*, or any part thereof, shall take the same or like Oath, *mutatis mutandis*, for the due Execution of his or their Office or Offices, before the Barons of the said Court of Exchequer in *Scotland*, as any Auditor of any the Crown Revenues in *England* hath or have used or ought to take; and such Auditor or Auditors shall have the taking and making up all the said Accounts, which being sworn to by the respective Accountants as to the truth thereof, and allowed and declared by and before the said Court of Exchequer in *Scotland*, or before the Chief Baron, or some other of the Barons of the said Court of Exchequer, the same shall be examined, entred, and inrolled in the Offices of Remembrancer of the Queen's Majesty, her Heirs and Successors, and Particulars and Vouchers of such Account, contained in a Bag for that Purpose, shall be there left, and such Account shall be also entred in the Office of the Lord Treasurer's Remembrancer, in such and the like Manner as is and hath been used in the like Offices in *England*, and then shall be delivered into the Pipe Office in the Court of Exchequer in *Scotland*; and the Clerk of the Pipe or chief Officer in that Office, or his Deputy (in case that Office shall be executed by Deputy), shall cause the said Accounts to be examined, and if found true, to be entred and inrolled in the said Office, and shall make and give a Quietus or Discharge to the Accountant thereupon, which shall be a Discharge to and for such Accountant, as to all the Revenues, Duties, Matters, and Things therein, and thereby accounted for, paid, and answered; and if any Supers or Arrears shall be set upon the Accountant, or any other Person or Persons, Bodies-Politick or Corporate by or upon the said Account, the Court of Exchequer in *Scotland* shall award all proper and effectual Process to be made and issued out of such One of the Two Remembrancer's Offices as the Court shall direct, for the speedy accounting for, levying, and receiving of all such Supers and Arrears, and answering the same to the Use of the Crown, in such Sort and Manner as in like Cases may by Law be done, or hath been used in the Court of Exchequer in *England*.

*Extrajudicial  
Functions.*

Auditors to take  
the same Oath  
as Auditors in  
England;

And have the  
making up of the  
Accounts, etc.

*By the Act 4 & 5  
W. 4, c. 16, the  
office of Clerk of  
the Pipe was  
abolished.*

XII. Provided always, and be it enacted by the Authority aforesaid, That it shall and may be lawful to and for

*Appeal*

Party to any Judgment may bring a Writ of Error, returnable in Parliament, etc.

*Am. by 19 & 20 V., c. 56, § 20.*

Lord Treasurer to have the same Powers relating to the Revenues of Scotland.

How all Fines, Issues, etc., shall be levied and paid.

any Person or Persons, Bodies-Politick or Corporate, Party or Parties to any Judgment which shall be given in the said Court of Exchequer in *Scotland*, his, her, or their Heirs, Executors, or Administrators, or such other Person or Persons, Bodies-Politick or Corporate, who shall be privy to and affected by such Judgment, and who by Law is or are entitled to bring and maintain a Writ or Writs of Error thereupon, to sue and prosecute out of the Court of Chancery in *England* a Writ or Writs of Error, to be made in usual Manner upon any such Judgment, returnable in the Parliament of *Great Britain*, and such and the like Securities, Matters, and Things, Way and Method of Proceedings shall and may be had therein and thereupon, and relating thereto, as have been, are, or may be used and practised upon or concerning Writs of Error returnable in Parliament, upon any Judgment in any the Courts in *England*, and upon or relating to the affirming or reversal of such Judgments, and the Proceedings thereupon in like Cases; and every Person or Persons against whom any Orders or Decrees in *English* Causes shall be made in the said Court of Exchequer in *Scotland*, shall and may have and pursue such and the like Relief and Redress therein, as any Person or Persons against whom any Orders or Decrees in the Court of Exchequer in *England* have been or shall be made, may have and pursue in like Cases.

XIII. Provided also, That the Lord High Treasurer of *Great Britain* for the Time being shall have and exercise all such Powers, Authorities, and Jurisdictions, about or relating to any the Revenues or Duties of Custom and Excise, and other the Crown Revenues, Duties, or Treasure within *Scotland*, and the getting in, paying, issuing, and accounting for the same, or any part thereof, as fully and amply, to all Intents and Purposes, as the Lord High Treasurer of *Great Britain* for the Time being, by Virtue of such his Office, hath, or may, or can have or exercise about or concerning any the Crown Revenues, Debts, or Duties in *England*; Anything herein contained to the contrary in any wise notwithstanding.

XIV. Provided also, and be it enacted by the Authority aforesaid, That all and all Manner of Fines, Issues, Amerciaments, Forfeited Recognizances or Penalties, and other Forfeitures, of what Nature or Kind soever, which shall or may be set, imposed by, or incurred, or become forfeited in the said Court of Exchequer in *Scotland*, shall be levied by the Authority and Process of the said Court, and paid and answered to the Use of Her Majesty, her Heirs and Successors, although the Persons or their Lands or Tenements, Goods or Chattels, liable to the same Fines, Issues,



Amerciaments, Penalties, or Forfeitures, be or remain in any part of *Scotland* whatsoever.

XV. Provided nevertheless, That in case any Person or Persons, Bodies-Politick or Corporate, his, her, or their Heirs, Successors, Executors, or Administrators, shall alledge, plead, declare, or shew in the said Court of Exchequer in *Scotland*, good, perfect, sufficient Cause and Matter in Law, Reason, or good Conscience, in Bar or Discharge of any Fine, Issues, Amerciaments, forfeited Recognizances, or any other Forfeitures, Debts, or Duties due or payable to the Crown, or why such Person or Persons ought not to be charged or chargeable to or with the same, and the same Cause and Matter so alledged, pleaded, declared, or shewed, sufficiently proved in the said Court of Exchequer in *Scotland*, That then the said Court shall have full Power and Authority to accept, adjudge, and allow the same, and wholly and clearly to acquit and discharge all and every the said Persons, which shall be impleaded or sued for the same, or to make and take any fitting and reasonable Composition for the same, as in the Judgments and Discretions of the Barons of the said Court of Exchequer, upon hearing of the Attorney or Advocate General, or other learned Counsel of her Majesty, her Heirs and Successors, shall be found and thought just and reasonable, and to proceed and act therein, and give Discharges thereupon, in such Sort and Manner as hath been and is used and practised in the like Cases in and by the Court of Exchequer in *England*; Anything herein contained to the contrary notwithstanding.

XVI. And be it further enacted by the Authority aforesaid, That the Barons of the Court of Exchequer in *Scotland* shall have full Power and Authority, by Virtue of this Act, to take and pass the Accounts of all Sheriffs, and other Officers in *Scotland*, who have or shall have the Execution of any the Process issuing out of and returnable in the said Court of Exchequer, for the levying of any Revenue or Money for the Crown, and to charge and discharge them according to Right and Justice, and that in such Manner and Form as the said Sheriffs and Officers before the said Union were used to be charged and discharged, and to have their Accounts passed, or as the Barons of the said Court of Exchequer shall order, direct, or appoint.

XVII. And be it further enacted by the Authority aforesaid, That all and every Act and Acts of Parliament made in *England*, and in Force there, touching and concerning any Customs or Subsidies there, and also all and every Act and Acts of Parliament made in *England*, and

*Extrajudicial and Ministerial Functions.*

Persons showing good Cause in Bar of any Fines, etc., Court to allow the same, etc.

Barons to pass Sheriffs' Accounts, etc.

Am. by 19 & 20 V., c. 56, § 29.

Acts of Parliament made in *England* concerning Customs, etc., not contrary to the Articles of Union, to extend to *Scotland*.

*Ministerial  
Functions.*

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now in Force, touching and concerning any Excises there, and all and every the Authorities, Powers, Jurisdictions, Qualifications of Officers and Seizers, Directions for Navigation, and for carrying Goods Coastwise, Forfeitures, Penalties, Duties, and the Ways and Means for the recovering of them, or any of them, and all other Matters and Things in them or any of them contained, which are not contrary to or inconsistent with the aforesaid Articles of the Union of the Two Kingdoms of *England* and *Scotland*, or any of them, shall extend to *Scotland*, and shall and may be cognoscible in, and put in Execution by the Court of Exchequer in *Scotland*, as to all Matters and Things happening or arising in *Scotland*, as fully and amply, to all Intents and Purposes, as the same, or any of them, do extend, or may, or might be put in Execution, as to any Matters or Things touching and concerning Customs and Excises, or any other the Matters or Things aforesaid, happening or arising in *England*; and all Offences and Offenders in any the said Matters shall and may be sued and prosecuted for the same in the said Court of Exchequer in *Scotland*; and the Merchants and other Persons entitled to any Benefits, Allowances, Advantages, or Remedies touching or concerning any the said Customs or Excises in *Scotland*, shall have and enjoy the same in *Scotland* as fully and amply, to all Intents and Purposes, as they may or might if the same were or arose in *England*; and the Officers of the Customs and Excise in *Scotland* are required to make and allow the same accordingly; And the Barons of the Court of Exchequer in *Scotland* are required and enabled to cause Right to be done by and to all Persons concerned therein.

Queen to appoint what further Places, Ports, etc., in *Scotland* shall be lawful for landing or shipping Goods, etc.

Officers of Customs to reside at such Places.

XVIII. And for the better and more effectual Ascertaining the Ports, Members, Creeks and Havens in *Scotland*, where Goods and Merchandizes have been or may be exported and imported, and the several Keys, Wharfs, and other Places where the same may be put on Board any Ship or Vessel for Transportation, or be unshipt or unladen upon Importation; Be it further enacted by the Authority aforesaid, That the Queen's Majesty, her Heirs and Successors, shall and may, from Time to Time, by Commission or Commissions out of the Court of Exchequer in *Scotland*, assign and appoint all such further Places, Ports, Members, and Creeks in *Scotland*, as shall be lawful for the landing, discharging, lading, or shipping of any Goods, Wares, or Merchandizes in *Scotland*, and to what ancient and head Ports respectively such Places, Members, or Creeks shall respectively appertain; and where any such Place, Member, or Creek shall be so appointed as aforesaid, the Customer, Collector, Comptroller and Searcher of the

head Port, shall by themselves, or their sufficient Deputy or Deputies, Servant or Servants, reside and inhabit, for the entring, clearing and passing, shipping and discharging of Ships, Goods and Merchandize, and by Virtue of the said Commission or Commissions may likewise set down and appoint the Extents, Bounds, and Limits of every Port, Haven or Creek in *Scotland*, whereby the Extents, Limits, and Privileges of every Port, Haven, or Creek in *Scotland* may be ascertained and known; after which Appointment so made, the said Ports, Members, and Creeks so appointed, shall be observed and used for Importation and Exportation, in the same Manner, and subject to and under such Orders and Regulations, and to the same Effect, as the like Ports, Creeks, and Members appointed in *England* for Exportation or Importation there, are or ought to be by the Laws of *England*.

XIX. And whereas by the aforesaid recited Article of the Treaty of Union, it is provided, That the Court of Exchequer in *Scotland* have Power of passing Signatures, Gifts, Tutories, and in other Things as the Court of Exchequer in *Scotland* at the Time of the said Treaty had; Be it therefore enacted by the Authority aforesaid, That the Court of Exchequer in *Scotland* shall have Power to receive Resignations in her Majesties Name of all Baronies, Lands, Lordships, Tythes, Jurisdictions, Offices, and all other Rights which were in Use to be resigned and received in her Majesties Name in the Exchequer at the Time of the said Treaty; and that Signatures, Gifts, Tutories, and other Things which were presented, revised, and compounded, or which were passed or given by the Lord High Treasurer, or Commissioners of the Treasury, or Court of Exchequer there at the Time of the said Treaty, shall be given in, resigned, presented, revised, compounded, and expedited as formerly, with this Alteration only, That the Presenter of Signatures shall present the said Signatures, Gifts, Tutories, and other Things to the said Chief Baron and Barons of the Exchequer in *Scotland*, who are hereby authorized and empowered to revise and compound the same, in the same Manner and with the same Powers as the said Lord High Treasurer or Commissioners of Treasury of *Scotland* might have done, and thereafter in a Court of Exchequer to hear Parties concerned, and to pass all such Signatures, Gifts, Tutories, and other Things aforesaid, and especially to declare and appoint Fines, as the Court of Exchequer might have done at the Time of the said Treaty, and such Signatures, Gifts, Tutories, and other Things aforesaid, being passed in the Exchequer, shall be recorded by the proper Clerks, and thereafter be expedited at the proper Seals, as at the Time of the said Treaty by the Law and

*Ministerial  
Functions.*

Court empowered to receive Resignations of Baronies, Lands, etc.

*Am. by 10 & 11 V., c. 51; and 19 & 20 V., c. 56, § 18.*

*Am. by 12 & 13 V., c. 51, § 24; and 19 & 20 V., c. 56, § 19.*

*Practitioners and  
Officers.*

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Practice of *Scotland* was required : Reserving nevertheless full Power to her Majesty, her Heirs and Successors, to receive Resignations immediately in her or their Royal Hands, and to grant all Signatures, Gifts, and other Things, in the same Manner as her Majesty could have done at the Time of the aforesaid Treaty.

English Coun-  
sellors, etc., may  
plead.

XX. And be it further enacted by the Authority aforesaid, That all Barristers at Law, Advocates, or Counsellors, who may plead and practise before the Court of Exchequer in *England*, or before the Court of Session in *Scotland*, have and shall have Right and Privilege to plead and practise before the said Court of Exchequer in *Scotland*.

How Offices for Life  
shall be enjoyed.

XXI. Provided always, and be it enacted, That the Two principal Clerks of Exchequer in *Scotland*, and other Officers in that Court, who have Grants of their Offices during Life, or of Inheritance, shall enjoy their Offices according to the Nature of their Gifts, except in so far as these Offices are inconsistent with the Constitution of Exchequer, as the same is settled by this Act : in which Case, be it enacted by the Authority aforesaid, That any Person having Right to any such Office shall be provided in One or other of the Offices established by this Act, equal in Value to what they now enjoy, to hold for Life, or in Fee respectively, or have some other equivalent Recompence for the Loss of such Office.

Crown Title to  
Lands, etc., to be  
tried by Court of  
Session.

*Supra*, § 8.

XXII. Provided always, That the Validity or Invalidity and Preference of the Title of the Crown to any Honors, Manors, Lands, Tenements or Hereditaments, or to Casualties belonging to the Crown, shall continue to be tried and decided in the Court of Session as was used, and of Right ought to have been by the Law and Practice of *Scotland*, at the Time of the Union, and not otherwise ; Anything in this Act contained to the contrary notwithstanding.

Table of Officers'  
Fees to be hung  
up in Exchequer  
Court.

XXIII. And be it further enacted by the Authority aforesaid, That no Officer, Minister, Clerk, or other Person employed in the said Court of Exchequer in *Scotland* shall ask, demand, receive, or take from any of her Majesties Subjects, or from any other Person or Persons whatsoever, any greater or other Fee, Reward, Profit, Advantage, Matter, or Thing whatsoever, for or in respect of any Business, Matter, or Thing transacted, dispatched, made, or done in the said Court of Exchequer, than such only as shall be settled and allowed by the Barons of the said Court of Exchequer, or any Three or more of them (whereof the Chief Baron to be One), under their Hands : Which Fees or Allowances shall be contained in a Table to be hung up in the most publick and visible Place of the said Court of Exchequer ; and to which any of her Majesties Subjects,

or others, may have free Liberty to resort, and to have a View and Perusal thereof, without Fee or Reward; and each of the Masters or Chief Officers in the Offices of Queen's Remembrancer, Lord Treasurer's Remembrancer, Clerk of the Pipe, and Clerk of the Pleas, and Auditor, shall take care, That a Table of the Fees and Allowances relating to their respective Offices and Places and Business therein transacted, and so allowed and signed, as aforesaid, shall be hung up in some publick and visible Place in their said respective Offices, to which any of her Majesties Subjects, or others, may have free Liberty to resort, and to have a View and Perusal thereof, without Fee or Reward; And if any Person or Persons shall offend in any the Premises, the Barons of the said Court of Exchequer, upon Complaint thereof to them made in that Behalf, shall cause Right to be done to the Party complaining, and to punish the Offenders by Fine, Suspension, or Deprivation of Office, or as to them shall seem just and reasonable, and to recompense the Complainer with Costs in that Behalf.

*Fees.*

Like Tables to be hung up in Remembrancer's Offices, etc.

Penalty on Offenders.

XXIV. And be it further enacted by the Authority aforesaid, That the Number of the said Barons of her Majesties said Court of Exchequer in *Scotland* shall not at any Time exceed the Number of Five.

Number of Barons.

#### 7° ANNÆ REGINÆ.

##### CAP. XV.

*An Act for altering Whitsuntide and Lammas Terms for the Court of Exchequer in Scotland.*

[Expired, or Spent.]

#### 4° GEORGII II. REGIS.

##### CAP. XXVI.

*An Act that all Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language.*

[Expired, or Spent.]

#### 48° GEORGII III. REGIS.

##### CAP. CXLV.

*An Act for enabling his Majesty to grant Annuities to the Judges of the Courts of Session, Justiciary, and Exchequer in Scotland upon the Resignation of their Offices.*

[Expired, so far as applicable.]

*Extents.*

[See 38 H. 8, c. 29, 7 Jac. 1, c. 15; The Diligence provided by 19 & 20 V., c. 55, is declared, by § 42, to be equivalent to Extent.—By Rules of 5th July 1822, it is ordered that no Fiat for an Extent in Aid shall be granted, unless the Party applying for the same shall make Affidavit that unless the Writ be issued the Debt due to the Crown from the Party applying will be in Danger of being lost to the Crown (Scrope's Hist. View).]

## 57° GEORGII III. REGIS.

## CAP. CXVII.

*An Act to regulate the issuing of Extents in Aid.*—[11th July 1817.]

§ I. Amount of Debt due to the Crown to be indorsed upon the Writ, as the Sum to be levied by the Sheriff.—II. If any Overplus, Court to dispose of it upon summary Application.—III. Not to prejudice the Debtor to the Crown in recovering the Remainder of any Debt.—IV. Extents in Aid not to be sued out by Simple Contract Debtors to the Crown, etc., except in certain Cases.—V. Extent in Aid not to issue on Bonds for the Payment of Duties against any Corporate Body, etc.—VI. Persons imprisoned under any Writ of Capias in Extents in Aid, may apply to the Courts of Exchequer for their Discharge.

## 7° &amp; 8° GEORGII IV. REGIS.

## CAP. LIII.

[Excise Regulation Act, 1827.—Am. by 4 & 5 W. 4, c. 51; and 4 V., c. 20.]

*Procedure in Superior Courts.*

Prosecutions in the Superior Courts of Record to be within Three Years.

See 19 & 20 V., c. 55.

*Limitation of Actions.*

See 5 & 6 V., c. 97, § 5; *Infra*, Book II., Court of Session.

Courts of Exchequer in Scotland and Ireland to exercise the like Jurisdiction and employ the same Process for the Recovery of the Excise Revenue as the Court of Ex-

*An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland.*—[2d July 1827.]

§ LVII. And be it further enacted, That all Penalties imposed by this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, and incurred for or by reason of any Offence or Offences against this Act or the said other Acts or any of them, may be sued for and recovered, and all Goods, Commodities, and Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, may be returned for Condemnation, and condemned in his Majesty's Courts of Exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively, as the Cause of such Prosecution may have arisen in *England*, *Scotland*, or *Ireland*: Provided always, that the Proceedings for the Recovery of any such Penalty or Penalties, or for the Condemnation of any such Goods, Commodities, or Chattels, shall be commenced respectively within Three Years next after the Commission of the Offence or Offences by which such Penalty or Penalties shall have been incurred, or after the seizure of such Goods, Commodities, or Chattels shall have been made.

§ LVIII. And be it further enacted, That his Majesty's Courts of Exchequer in *Scotland* and *Ireland* respectively, and the Barons and Judges of the said Courts respectively, shall and they are hereby respectively empowered, authorized, and required to exercise in *Scotland* and *Ireland* respectively the like Jurisdiction, and to make, issue, hold, and enforce the like Rules, Orders, Process, and Proceedings in and for the Condemnation of any Goods, Commodities, and Chattels forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, and in and for the Re-

to every of any Debts, Duties, Penalties, and Forfeitures due to his Majesty, his Heirs or Successors, arising from or relating to the Revenue of Excise, or incurred under or by Virtue of this Act, or the said other Acts or any of them, as are directed by this Act to be, or as at and immediately before the Commencement of this Act are, or as hereafter may be exercised, made, issued, held, or enforced for such Purposes respectively in or by his Majesty's Court of Exchequer in *England*, and the Barons and Judges thereof, and according to the Practice of such last-mentioned Court: Provided always, that Nothing hereinbefore contained shall repeal or be deemed or construed to repeal a certain Act made in the Sixth Year of the Reign of her Majesty Queen Anne, intituled, "An Act for settling and establishing a Court of Exchequer in the North Part of Great Britain called *Scotland*;" but that the said Act shall remain in full Force and Effect, except only so far as the same is hereinafter expressly repealed.

§ LIX. And for the Recovery of any Debt relating to the Revenue of Excise, which by Record in any of his Majesty's Courts of Exchequer in *England*, *Scotland*, or *Ireland*, shall be due to his Majesty, his Heirs or Successors, in any Case where the Person or Persons of the Debtor or Debtors, or the Estate or Effects of such Debtor or Debtors, shall be within the Jurisdiction of either of such Courts, but such Debt shall not have originally accrued within the Jurisdiction thereof; Be it enacted, That where, by or upon any Judgment, Decree, Inquisition, Specialty, Account, or other Matter recorded in any of his Majesty's Courts of Exchequer in *England*, *Scotland*, or *Ireland*, any Debt relating to the Revenue of Excise shall be due to his Majesty, his Heirs or Successors, a Copy of the Record of such Judgment, Decree, Inquisition, Specialty, Account, or other Matter, upon Application made on Behalf of his Majesty, his Heirs or Successors, to such Court, shall be forthwith exemplified and transmitted, under the Seal of the said Court, to such other of his Majesty's said Courts of Exchequer as shall be named or specified in such Application; and such last-mentioned Court shall, upon Application made on Behalf of his Majesty, his Heirs or Successors, cause such Copy so exemplified and transmitted to be forthwith enrolled in the Rolls of the said last-mentioned Court; and upon the same being so enrolled, the said last-mentioned Court shall cause Execution or other Process to issue for recovering and levying the said Debt so due, according to the Rules and Practice of such Court, in like Manner in all Respects as if such Record had been originally entered or filed in the said last-mentioned Court, or the said Debt had originally accrued within the Jurisdiction thereof; and the Proceeds of such Debt, when so recovered, shall be accounted for and paid over in the same Manner as if the same had been recovered within the Jurisdiction of the Court in which such Debt originally accrued.

§ LX. And whereas it is fit to provide for the Appearance of every Person to any Writ or Process of Subpoena issued against such Person out of the Court of Exchequer in *England*, *Scotland*, or *Ireland*, whether to answer his Majesty in such Court concerning any Articles on Behalf of his Majesty to be there objected against such Person, or to give Evidence upon the Trial of any Information or Issue depending in such Court, or upon any Inquisition to be taken upon any Commission or Writ of Extent issued out of such Court, in whatever Part of the United Kingdom the Person against or to whom such Subpoena respectively may be issued shall be or reside; Be it therefore enacted, That the service of any Writ of Subpoena or other Process issued out of any of his Majesty's Courts of Exchequer in *England*, *Scotland*, or *Ireland*, upon any Person who shall reside or be in any Part of the United Kingdom out of the Jurisdiction of such Court, requiring the

*Procedure in Superior Courts.*

chequer in *England*.

Nothing herein to repeal 6 Anne, c. 26, except as hereinafter mentioned.

Exemplification of any Excise Debt of Record in any of the Courts of Exchequer in *England*, *Scotland*, or *Ireland*, may be transmitted to any other of such Courts, and enrolled, and the Debt recovered there.

22 & 23 V., c. 21, § 24.

Service of Subpoena in any One Part of the United Kingdom valid as to Appearance in any other Part.

19 & 20 V., c. 56, § 6.

*Procedure in  
Superior Courts.*

Appearance of such Person to answer his Majesty in the said Court concerning any Articles to be there on his Majesty's Behalf objected, or to give Evidence upon the Trial of any Information or Issue depending in such Court, or upon any Inquisition to be taken upon any Commission or Writ of Extent issued out of such Court, shall be as good and effectual in Law as if such Writ or Process had been served in that Part of the United Kingdom within the Jurisdiction of the Court where the Person so served shall be required to appear; and in Case any Person so served shall not appear according to the Exigence of such Writ or Process, it shall be lawful for the Court out of which the same shall have been issued, upon Proof being made of the Service thereof to the Satisfaction of such Court, to transmit a Certificate of such Default, under the Seal of such Court, to the Court of Exchequer in that Part of the United Kingdom in which such Writ or Process shall have been served; and it shall thereupon be lawful for such last-mentioned Court in all such Cases, and such last-mentioned Court is hereby authorized and required to proceed against and punish the Person so having made Default, in like Manner as such last-mentioned Court might lawfully have done if such Person had neglected or refused to appear in Obedience to a like Writ of Subpoena or other Process issued out of such last-mentioned Court: Provided always, that in Cases where the Subpoena or other Process served shall be to give Evidence, no Person so having made Default as aforesaid shall be proceeded against or punished by reason or on account thereof, unless it shall be made to appear to the Satisfaction of such last-mentioned Court, that a reasonable and sufficient Sum of Money to defray the Expenses of so attending to give Evidence, and of returning from giving such Evidence, had been tendered to such Person previous to such Default.

No Action to be commenced, or Writ of Appraisement issued, unless by Order of the Commissioners, or in the Name of the Attorney General.

19 & 20 V., c. 56, § 22.

*Infra*, § 71, 72.

§ LXI. And be it further enacted, That it shall not be lawful to commence, prosecute, enter, file, or exhibit any Action, Bill, Plaint, or Information, or other legal Proceeding, against any Person or Persons, for the Recovery of any Penalty or Forfeiture incurred under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise or Customs, or to issue or cause to be issued any Writ of Appraisement for the Condemnation of any Goods, Commodities, or Chattels whatsoever, seized as forfeited under or by Virtue of this Act, or the said other Acts or any of them, except by Order of the Commissioners of Excise or Customs, or by Order of the Commissioner or Commissioners and Assistant Commissioner of Excise or Customs in *Ireland*, and in the Name and at the Suit of an Officer of Excise or Customs, or by and in the Name and at the Suit of his Majesty's Attorney or Solicitor General for *England* or *Ireland* respectively, in *England* or *Ireland* respectively, or by Order of the Commissioner or Commissioners and Assistant Commissioners of Excise or Customs in *Scotland*, and in the Name and at the Suit of such Officer, or by and in the Name and at the Suit of the Lord Advocate or his Majesty's Solicitor General for *Scotland*, in *Scotland*; and if any such Action, Bill, Plaint, or Information, or other legal Proceeding, or Writ of Appraisement, shall be commenced, prosecuted, entered, filed, exhibited, or issued in any other Manner than as aforesaid, such Action, Bill, Plaint, Information, or other legal Proceeding, or Writ of Appraisement, and all Proceedings thereupon respectively had, shall be and are hereby declared to be null and void; any Law, Custom, or Usage to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall be deemed or construed to extend to any summary Proceeding by or at the Instance of any Officer of Excise or Customs, for the Conviction upon immediate Arrest of any Person or Persons under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise or Customs.

Not to extend to summary Proceedings on Arrests.

See 19 & 20 V., c. 6, § 12, 16.



§ LXII. And be it further enacted, That no Claim shall be entered in any of his Majesty's Courts of Exchequer in *England, Scotland, or Ireland*, to any Goods, Commodities, or Chattels whatsoever, seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise or Customs, which are returned into such Court, unless such Claim shall be, within the Time limited by the Practice of the said Court, entered in the real Name or Names of the Proprietor or Proprietors of the same, describing the Place of Residence and the Business or Profession of such Person or Persons; and if such Person or Persons shall reside in *London, Edinburgh, or Dublin*, or within Ten Miles thereof respectively, Oath shall be made by every such Person before One of the Barons of the said Courts of Exchequer respectively, that the Goods, Commodities, or Chattels respectively so claimed was or were really and truly the bona fide Property of such Person or Persons at the Time of such Seizure; but if any such Person shall not reside in *London, Edinburgh, Dublin*, or within Ten Miles thereof respectively, then and in such Case Oath shall be made in like Manner by such Person, or by the Agent or Attorney or Solicitor by whom such Claim shall be entered, that he has full and legal Authority and Directions from such Proprietor to enter such Claim, and that to the best of his Knowledge and Belief such Goods, Commodities, or Chattels respectively were at the Time of the Seizure thereof really and truly the bona fide Property of the Person or Persons in whose Name or Names such Claim is so entered, which Oath shall be indorsed and certified on the Back of the Indenture of Appraisement upon which such Claim shall be entered; and on Failure thereof, the Goods, Commodities, or Chattels respectively shall be condemned, and Judgment shall be entered thereon by Default, in the same Manner as if no Claim had been entered thereto; and every Person who shall be convicted of making or taking a false Oath to any of the Facts hereinbefore directed or required to be sworn, shall be deemed guilty of Perjury, and shall be liable to all the Pains and Penalties to which Persons are liable for wilful and corrupt Perjury.

#### *Seizure and Claims.*

No Claim to be entered in the Courts of Exchequer as to any Goods seized, unless in the real Names of the Proprietors thereof.

Id. § 11.

§ LXIII. And be it further enacted, That upon the Entry of any such Claim to any Goods, Commodities, or Chattels whatsoever, seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise or Customs, which are returned for Condemnation as aforesaid, the Person or Persons who shall enter any Claim as Proprietor or Proprietors thereof respectively, and who shall reside within the Jurisdiction of the Court in which such Claim shall be entered, shall be bound, with Two other sufficient Persons as Sureties, in the Penalty of One hundred Pounds, to answer and pay the Costs occasioned by such Claim; and where any such Proprietor or Proprietors shall not reside within such Jurisdiction, the Agent, Attorney, or Solicitor by whose Directions such Claim shall be entered shall in like Manner be bound, with Two other sufficient Persons as Sureties, in the like Penalty, to answer and pay the Costs occasioned by such Claim; and in Default of giving such Security within the Time limited by the Practice of the Court in which such Claim shall be entered, all such Goods, Commodities, or Chattels respectively shall be adjudged to be forfeited, and shall be condemned as unclaimed; any Law, Custom, or Usage to the contrary thereof in anywise notwithstanding.

Claimants shall be bound with Two Sureties in a Penalty of L. 100 to pay costs of Claim, and in Default thereof the Goods, etc., shall be condemned.

19 & 20 V., c. 56, § 11.

§ LXIV. And be it further enacted, That all Goods, Commodities, and Chattels whatsoever forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, shall and may be seized by any Officer or Officers of Excise, or Person or Persons employed in the Revenue of Excise, or Person or Persons acting in the Aid and Assistance of any such Officer or Per-

Goods forfeited under Excise Laws may be seized by any Officer of Excise, or his Assistant.

*Seizure, etc.*

On Trials of Seizures, Merits to be proceeded on without inquiring into Fact or Form of Seizure.

Id. § 11.

Prosecutions before Commissioners of Excise or Justices of the Peace.

*As to Procedure within Metropolitan District. Am. by 15 & 16 V., c. 61, § 1, 2.*

No Information exhibited before Justices of the County shall be objectionable be-

son so employed as aforesaid; and that on all Trials of Seizures whatsoever, in any of the Courts of Exchequer or elsewhere, the Seizure, together with the Form and Manner of making the same, shall be taken to have been as set forth in the Information, without any Evidence thereof; and it shall be lawful for all Judges and other judicial Persons before whom any such Seizure shall be brought to Trial or Hearing, and having respectively Jurisdiction in that Behalf, and they are hereby respectively authorized and required to proceed to Trial on the Merits of the Cause without inquiring into the Fact, Form or Manner of making the Seizure.

§ LXV. And be it further enacted, That for the Recovery of any Penalty imposed by this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, and incurred for or by reason of any Offence committed against this Act, or the said other Acts or any of them, or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or the said other Acts or any of them, where the Offence shall have been committed, or the Person or Persons committing the same shall be found, or where the Goods, Commodities, or Chattels shall have been seized as aforesaid, within the Limits of the Chief Office of Excise in London, an Information thereupon may be exhibited before, and be heard, adjudged, and determined by any Three or more of the Commissioners of Excise: And where the Offence shall have been committed, or the Person or Persons committing the same shall be found, or where the Goods, Commodities, or Chattels shall have been seized as aforesaid, in any Part of the United Kingdom out of the Limits of the said Chief Office, the Information thereupon may be exhibited before any One or more of his Majesty's Justices of the Peace for the County, Shire, Division, City, Town, or Place wherein the Offence shall have been committed, or the Person or Persons committing the same shall be found, or where the Goods, Commodities, or Chattels shall have been seized as aforesaid; and such Information shall and may be heard, adjudged, and determined by any Two or more of his Majesty's Justices of the Peace for the said County, Shire, Division, City, Town, or Place; and such Commissioners of Excise, and any Two or more of such Justices of the Peace respectively, shall and they are hereby respectively authorized and required, upon any such Information having been so exhibited as aforesaid, and upon the Appearance and pleading of the Person or Persons against whom such Information shall have been exhibited, or who shall claim any Goods, Commodities, or Chattels in such Information alleged to have been forfeited, or in Default of such Appearance and pleading, upon Proof of the Service of such Summons on such Person or Persons as hereinafter mentioned, to proceed to the Examination of the Fact or Facts in such Information alleged, and to give Judgment as well for any such Penalty or Penalties, which upon the due Examination of One or more credible Witness or Witnesses upon Oath, or upon the voluntary Confession of the Party accused, shall be found to have been incurred, as for the Condemnation of any Goods, Commodities, or Chattels seized as aforesaid, which upon such Examination or Confession shall be found to be forfeited, or respectively as the Case may require; and such Commissioners and Justices respectively shall and they are hereby authorized and required thereupon to award and grant a Warrant or Warrants under their Hands for the due Execution of and carrying into Effect, as hereinafter mentioned, such Judgment: Provided always, that where any such Information as aforesaid shall be exhibited before any Justice or Justices of any County or Shire in England, Scotland, or Ireland respectively, in which there are several and distinct Commissions of the Peace, no Information thereupon exhibited before any such Justice or Justices, nor

any Judgment thereupon given by such Justices, nor any Warrant or Warrants thereupon granted for the due Execution thereof, shall be subject or liable to any Objection whatsoever by reason of any Offence alleged in such Information having been committed, or the Person or Persons committing the same having been found, or the Goods, Commodities, or Chattels having been seized as aforesaid, in any Division, City, Town, or Place of such County or Shire having local Jurisdiction, whether such City, Town, or Place be or be not a County in or of itself; Anything in this Act, or any other Act or Acts of Parliament, to the contrary thereof in anywise notwithstanding.

§ LXVI. [As to the Time of laying Informations, Notice of Informations, and Summons.]

§ LXVII. And be it further enacted, That the Justices of the Peace, or any Two or more of them, in the several Counties, Shires, Divisions, Cities, Towns, and Places throughout the United Kingdom, shall meet once in every Three Calendar Months in their respective Jurisdictions, or oftener, if there shall be Need or Occasion so to do, to receive, hear, adjudge, and determine all Matters and Things brought before them relating to the Revenue of Excise, and all Informations exhibited or to be exhibited within such Jurisdiction, for or in respect of any Penalty incurred, or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise: Provided always, that if it shall happen that any Justice or Justices of the Peace before whom any such Information shall have been exhibited as aforesaid, or before whom any Proceedings shall have been had upon any such Information, shall die or be absent at any Time after such Information shall have been so exhibited, and before the Person or Persons against whom such Information shall have been exhibited shall appear or plead to such Information, or before any Judgment shall be thereupon given, or before any Judgment thereupon given shall be duly executed, so that the further Attendance of any such Justice or Justices thereupon cannot be procured, it shall be lawful for any other Justice or Justices of the Peace within the same Jurisdiction to act therein for and in lieu of the Justice or Justices of the Peace so dying or absent, in all respects relating to such Information and the due Completion of the Proceedings thereupon, in the same Manner as if such Information had been at first exhibited before such other Justice or Justices respectively; and that all Powers and Authorities, Rules and Regulations given and granted by any Act or Acts of Parliament relating to Justices of the Peace, or to Constables or other Officers acting under their Authority, respecting summary Proceedings, shall be enforced, and shall be applied to and executed (excepting wherein altered or otherwise specially provided for by, or which shall be repugnant to or inconsistent with, this Act), for the Conviction of any Person or Persons prosecuted by Order of the Commissioners of Excise, or the Commissioner or Commissioners and Assistant Commissioners of Excise in Scotland and Ireland respectively, for any Penalty incurred by such Person or Persons under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, and for the Levy of any such Penalty, or for the Imprisonment of any such Offender or Offenders, in the same Manner as if such Powers and Authorities, Rules and Regulations, had been and were repeated and contained in the Body of this Act.

§ LXVIII. And be it further enacted, That it shall not be lawful for any Assistant Commissioner of Excise, or for any Officer of Excise or Person employed in the Collection or Management of the Revenue of Excise, to act as a Justice of the Peace in any Part of the United Kingdom, in the Execution of any of the Powers, Authorities, Clauses,

*Procedure before Justices.*

cause there are distinct Commissions of the Peace, within whose Jurisdiction the Offence was committed.

*Rep. by 4 & 5 W. 4, c. 51, § 18, 19: Two or more Justices to meet every Three Calendar Months, or oftener, to adjudge Excise Cases.*

*Regulations in case of the Death or Absence of any Justice during Proceedings.*

*Reference to former general Powers of Justices.*

*No Officer of Excise to act as a Justice in Excise Cases, nor any Excise Trader in*

*Procedure before Justices, etc.*

any Case relating to his Trade.

Penalties of Treble Value to be either Treble the Value of the best Goods of the like Kind, or £100, at the Election of the Commissioners of Excise or Prosecutor.

Persons incurring Excise Penalties may be prosecuted jointly or severally.

Averment in Information that the Commissioners had ordered Prosecution, etc., shall be deemed sufficient Proof of such Order, etc.

20 & 21 V., c. 44, § 3; 19 & 20 V., c. 66, § 22.

What shall be

Matters, or Things contained in this Act, or in any other Act or Acts of Parliament relating to the Revenue of Excise; and that it shall not be lawful for any Trader subject to the Excise Laws to act as a Justice of the Peace as aforesaid in any Case which relates to the particular Trade or Business of such Trader, or in any Case in which he shall be in anywise, as such Trader, concerned or interested; and, if any such Assistant Commissioner, or any such Officer or Person employed as aforesaid, or any such Trader as aforesaid, shall presume to act as a Justice of the Peace, contrary to the true Intent and Meaning of this Act, all Proceedings in that Behalf shall be and the same are hereby declared to be utterly null and void to all Intents and Purposes.

§ LXIX. And be it further enacted, That where [by] any Act or Acts of Parliament relating to the Revenue of Excise or Customs, a Penalty of Treble the Value of Goods or Commodities is imposed for or in respect of any Offence committed by any Person or Persons against such Acts, or any of them, every Person so offending shall thereupon severally forfeit and lose for every such Offence, either Treble the Value of the Goods or Commodities, to be estimated and taken according to and at the Rate and Price for which the best Goods or Commodities of the like Sort or Kind and Denomination for which the Duty or Duties thereon have been paid were sold for in *London, Edinburgh, or Dublin* respectively (as the Penalty may have been incurred in *England, Scotland, or Ireland* respectively), at the Time of the Commission of such Offence, or the Sum of One hundred Pounds in lieu and instead of such Treble Value, at the Election of the Commissioners of Excise or Customs, or the Commissioner or Commissioners and Assistant Commissioners of Excise or Customs in *Scotland and Ireland* respectively, or the Person who shall inform or sue for the same.

§ LXX. And be it further enacted, That where by this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, a Penalty is imposed upon every Person committing the Offence by which such Penalty is incurred, and such Offence shall have been or shall be committed by several Persons jointly, such several Persons shall jointly and severally incur every such Penalty, and it shall be lawful to proceed against such Persons jointly or severally for the Recovery thereof, as the Commissioners of Excise, or the Commissioner or Commissioners and Assistant Commissioners of Excise, in *Scotland and Ireland* respectively may deem expedient; Anything in this Act, or in any other Act or Acts of Parliament, to the contrary thereof notwithstanding.

§ LXXI. And be it further enacted, That where, in any Information for the Recovery of any Penalty, or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise or Customs, any Allegation or Averment shall be made that such Information was exhibited, or that the Commissioners of Excise or Customs, or the Commissioner or Commissioners and Assistant Commissioners of Excise or Customs in *Scotland and Ireland* respectively, had ordered such Information to be exhibited, or that the Commissioners of Excise or Customs, or the Commissioner or Commissioners and Assistant Commissioners of Excise or Customs in *Scotland and Ireland* respectively, or the Informant or Person suing by such Information, had made their or his Election, as in such Information shall be alleged or averred, such Allegation and Averment shall be, and the same respectively shall be deemed and taken to be, sufficient Proof of such Facts so alleged or averred respectively, without any other or further Evidence thereof.

§ LXXII. And be it further enacted, That upon the Trial of any

Indictment, Information, Action, Suit, or Prosecution whatsoever, or in any other legal or judicial Proceeding, where it may be necessary to give Proof of any Order issued by the Lord High Treasurer or Commissioners of the Treasury, or by the Commissioners of Excise respectively, the Letter or Instructions which shall have been officially received by the Collector, Supervisor, Surveyor, or Officer of Excise of the Collection, District, or Place in which the Subject-matter of any such Indictment, Information, Action, Suit, or Prosecution, or other legal or judicial Proceeding, may have arisen, for the Direction and Government of such Collector, Supervisor, Surveyor, or Officer, and in which such Order is mentioned or referred to, and under which said Letter or Instructions such Collector, Supervisor, Surveyor, or Officer shall have acted, shall be admitted and taken to be sufficient Evidence and Proof of such Order, to all Intents and Purposes whatsoever.

§ LXXIII. And be it further enacted, That it shall be lawful for the Commissioners of Excise and the Justices of the Peace respectively, and they are hereby respectively authorized and required, upon the Appearance of any Person or Persons summoned upon any Information, or in Default of the Appearance of such Person or Persons, and upon Proof of the Service as before-mentioned of such Summons as aforesaid, to proceed to the Examination of the Fact or Facts alleged in such Information, and of the Witness or Witnesses on either Side, upon Oath, touching the Penalty or Penalties alleged in such Information to have been incurred, or the Forfeiture of any Goods, Commodities, or Chattels therein alleged to have been seized as forfeited, and thereupon to give Judgment accordingly, notwithstanding any Defect or Defects of Form which may appear in such Information, or in any Proceedings thereupon or relating thereto.

§ LXXIV. And be it further enacted, That it shall be lawful for the Commissioners of Excise and Justice or Justices of the Peace, and Commissioners of Appeal under this Act respectively, before whom any such Information as aforesaid, or any Matter or Thing under this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, shall be judicially brought, and they are hereby respectively authorized and required to summon any and every Person (other than the Person or Persons against whom such Information is exhibited), in whatever Part of the United Kingdom any such Person so summoned shall then reside or be, to appear before the said Commissioners or the Justices, or the said Commissioners of Appeal, who are to hear, adjudge, and determine such Information, Matter, or Thing, at a certain Time and Place to be specified and set forth in such Summons, to give Evidence upon Oath of the Truth of any Facts alleged in such Information, or touching or relating thereto, or to such Matter or Thing as aforesaid; and every Person, other than as aforesaid, being so summoned, and having the reasonable Expenses for such Attendance tendered, who shall neglect or refuse to appear according to the Exigency of such Summons, or who, having so appeared, shall refuse to take Oath, or, if a Quaker, to affirm, or shall refuse to give Evidence, or to answer, according to the best of his or her Knowledge and Belief, any legal Question, when thereunto required, shall for every such Default or Offence forfeit and lose the sum of Fifty Pounds.

§ LXXV. And whereas, for better securing his Majesty's Revenue of Excise, and the Encouragement of the Officers and others who shall detect or give Information of any Offence committed against the several Acts of Parliament relating thereto, the Penalties and Forfeitures by such Acts imposed are directed, where such Penalties are recovered, or the Goods, Commodities, or Chattels seized as forfeited are condemned, to be divided between his Majesty and the Person or Persons who shall have detected or given Information of the Offences:

*Commissioners and Justices.*

sufficient Proof, on Trial, of any Order of the Treasury, or Commissioners of Excise.

20 & 21 V., c. 44, § 3.

Commissioners and Justices to proceed to hearing and Judgment on the Merits, without regard to Defects in Form.

*Supra*, § 64.

Witnesses summoned and not appearing, or refusing to give Evidence, to forfeit L.50.

Officers of Excise and Informers to be deemed competent Witnesses notwithstanding any Interest in the Penalty or Forfeiture under l'Prosecution.

*Commissioners and Justices.*

15 V., c. 27, § 1.  
19 & 20 V., c. 56,  
§ 40, 43.

Proof of Payment of Duties, or that Goods seized are not of the Sort or Kind alleged, shall lie upon the Proprietor or Person claiming.

Judgment to be entered by Default against a Prisoner who shall not appear and plead.  
See 19 & 20 V., c. 56, § 6.

Power of Com-

And whereas, from the secret Manner in which such Offences are committed, it frequently happens that the Officer of Excise, or other Person detecting or informing of the Offence, is the only or a principal Witness to prove the same, but the Offenders escape Conviction by reason of Objection being made and allowed to the Competency of such Witness on the Trial or hearing for the Recovery of such Penalty, or the Condemnation of such Goods, Commodities, or Chattels, on account of his Interest as a Person entitled to a Share of such Penalty or Seizure; and it is therefore expedient to remove all such Objections: Be it therefore enacted, That upon the Trial or hearing of any Information or other legal Proceeding for the Recovery of any Penalty incurred, or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, any Officer of Excise, or any other Person who shall or may be entitled to the whole or any Share of such Penalty or of such Seizure, shall be admitted by the Court in which, or the Commissioners or the Justices before whom, such Information shall be tried or heard, to give Evidence upon such Information, and shall be deemed and taken to be a competent Witness upon such Trial or hearing, notwithstanding any such Interest as aforesaid.

§ LXXXVI. And be it further enacted, That if upon any Information for the Recovery of any Penalty or Penalties incurred or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, or Customs, or in any Action brought by the Proprietor or Claimer of such Goods, Commodities, or Chattels, against any Officer of Excise, or any Person employed in the Revenue of Excise, or any Person acting in the Aid and Assistance of any such Officer or Person so employed as aforesaid, for any Act, Matter, or Thing done in pursuance of any such Act or Acts of Parliament, any Question shall be made or shall arise whether any Duty of Excise or Customs has been paid upon or in respect of the Goods or Commodities in such Information mentioned, or whether such Goods, Commodities, or Chattels are respectively of such Sort or Kind as in such Information is in that Behalf alleged, the Proof of the Payment of such Duty, or that the said Goods, Commodities, and Chattels respectively, are not of such a Sort or Kind as aforesaid, shall lie upon the Proprietor or Claimer thereof.

§ LXXXVII. And be it further enacted, That where any Person or Persons shall be in Prison on any Account whatsoever, and any Information shall be exhibited before the Commissioners of Excise, or any Justice or Justices of the Peace, against such Person or Persons, for the Recovery of any Penalty or Penalties incurred by such Person or Persons, or for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, claimed by such Person or Persons, and such Person or Persons, on a Copy of such Information being delivered to the Gaoler, Keeper, or Turnkey of the Prison wherein such Person or Persons shall be confined or imprisoned, with a Summons to appear and plead to and to attend the hearing of such Information at a Time and Place in such Summons mentioned, shall not appear and plead in Person, or by some Person duly authorized in that Behalf, to such Information, at the Time and Place so mentioned, such Proceedings shall be thereupon respectively had as are hereinbefore provided and directed in Cases of Default of Appearance to any such Information; any Law, Custom, or Usage to the contrary thereof notwithstanding.

§ LXXXVIII. And be it further enacted, That it shall be lawful for

the Commissioners of Excise and Justices of the Peace respectively, when they shall see Cause, except in Cases where there is or shall be any Provision that no Mitigation shall be made by the Justices of the Peace, and they are hereby respectively authorized and empowered to mitigate any Penalty incurred for any Offence committed against this Act or any other Act or Acts of Parliament relating to the Revenue of Excise, for which any Information shall have been exhibited before such Commissioners or Justice or Justices respectively, as they the said Commissioners and Justices respectively in their Discretion shall think fit, so as such Mitigation shall not reduce such Penalty to less than one-fourth Part thereof; and that every such Mitigation and Payment thereupon accordingly made, shall be a sufficient Discharge of every such Penalty to the Person or Persons convicted of such Offence: Provided always, that it shall be lawful for the Commissioners of Excise, and the Commissioner or Commissioners and Assistant Commissioners of Excise in *Scotland* and *Ireland* respectively, when they shall see Cause, and they are hereby authorized and empowered to further mitigate or entirely remit any such Penalty; Anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

§ LXXIX. And be it further enacted, That no Writ of Certiorari or other Writ or Process shall be issued at the Suit of any Defendant, out of any of his Majesty's Courts of Record in *England*, *Scotland*, or *Ireland*, nor shall any Bill of Suspension, Advocation, or Reduction, be passed, nor shall any Letter or Letters of Suspension, Advocation, or Reduction, or any other Proceeding, be issued out of the Court of Session or Court of Justiciary in *Scotland*, to supersede, sist, stay, remove, or in anywise affect any Information or judicial Proceeding before the Commissioners of Excise or Commissioners of Appeal in this Act after mentioned, or before any Justice or Justices of the Peace in the United Kingdom, in pursuance of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, or any Judgment thereupon; and that every such Information shall be tried and determined, and every such judicial Proceeding shall be had and completed, and every such Judgment executed, any such Writ of Certiorari or other Writ or Process, or Bill or Letter or Letters of Suspension, Advocation, or Reduction, or other Proceeding notwithstanding: Provided always, that Nothing herein contained shall extend, or be deemed or construed to extend, to any Writ of Certiorari sued or issued in such Cases in Behalf of his Majesty, out of his Majesty's Courts of Exchequer in *England*, *Scotland*, or *Ireland* respectively.

§ LXXX. And be it further enacted, That it shall be sufficient, in the Record or written Account of any Proceedings before the Commissioners of Excise, to state that the Information was exhibited to and before the Commissioners of Excise, without stating their Names; and that every Adjudication and Determination upon any such Information, by any Three or more of such Commissioners, shall and the same is hereby declared to be good and valid in Law, and may be executed and put in Force by Virtue of a Warrant or Warrants under the Hands of any Three Commissioners of Excise, whether the Commissioners setting their Hands to such Warrant or Warrants shall or shall not happen to be the particular Commissioners by whom such Adjudication or Determination was made, or whether such Three Commissioners so setting their Hands to such Warrant or Warrants were Commissioners at the particular Time or Times when such Adjudication or Determination as aforesaid was made; provided that the Persons so setting their Hands to such Warrant or Warrants shall at the Time and Times of such their setting their Hands thereto actually be such Com-

### *Appeal.*

missioners and Justices of the Peace to mitigate Penalty to one-fourth Part thereof.

*Am. by 4 & 5 W. 4, c. 51, § 20.*

*See 6 Anne, c. 26, § 15.*

Commissioners may further mitigate or entirely remit Penalty.

No Certiorari at the suit of a Defendant to supersede or affect any Proceedings by Commissioners of Excise or Justices of the Peace.

*Am. by 19 & 20 V., c. 56, § 17.*

Proviso as to Certiorari at the Suit of the Crown out of the Exchequer.

In Proceedings before Commissioners of Excise it shall be sufficient to mention that the Information was exhibited before the Commissioners of Excise, without specifying their Names; and any Three Commissioners of Excise may sign Warrants.

*Actions of  
Damages.*

No Action against any Officer of Excise without a Month's Notice, expressing the Names and Places of Abode of the Plaintiff and his Attorney.

*As to Notice and Limitation of Actions, Costs, and General Issue, see 5 & 6 V., c. 97; Infra, Book II., Court of Session.*

Id. § 4.

Limitation of Action against Officers.

Id. § 5.

Venue.

General Issue.

*See Id. § 8.*

Treble Costs.

*Rep. by § 2, Id. St.*

Tender of Amends may be made within One Month after Notice given, and pleaded in Bar, if not accepted.

In case of Nonsuit, etc., Costs may be awarded.

missioners; any Law, Custom, or Usage to the contrary in anywise notwithstanding.

§ LXXXI.-CXIII. [As to Courts of Commissioners; Body Warrants; Seizures; Execution; Sale; Penalties; and Prisoner's Allowance.]

§ CXIV. And be it further enacted, That no Writ, Summons, or Process shall be sued out against or served upon, nor shall any Action be brought, raised, or prosecuted against any Officer of Excise, or any Person employed in the Revenue of Excise, or any Person acting in the Aid and Assistance of any such Officer or Person so employed as aforesaid, for Anything done in pursuance of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, until after the Expiration of One Calendar Month next after Notice in Writing shall have been delivered to such Officer or Person as aforesaid, or left at the usual Place of his Abode, by the Attorney or Agent for the Person or Persons who shall intend to sue out such Writ or Process, or to bring, raise, or prosecute such Action as aforesaid; in which Notice shall be clearly and explicitly contained and set forth the Cause of such Action, the Time when and the Place where such Cause of Action arose, the Name and Place of Abode of the Person or Persons in whose Name or Names such Action or Suit is intended to be brought, and the Name and Place of Abode of the said Attorney or Agent; and that a Fee of Twenty Shillings, and no more, shall be paid for the preparing and serving of every such Notice.

§ CXV. And be it further enacted, That if any Action or Suit shall be brought, raised, or commenced against any Officer of Excise, or any Person employed in the Revenue of Excise, or any Person acting in the Aid and Assistance of such Officer or Person so employed as aforesaid, for anything done in pursuance of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, such Action or Suit shall be commenced within the Space of Three Calendar Months next after the Cause of Action shall have arisen, and shall be laid and prosecuted in the proper County or Place wherein the same arose; and the Defendant or Defendants in any such Action or Suit may plead the general Issue, and give this Act and the special Matter in Evidence thereunder at any Trial to be had thereupon; and if afterwards a Verdict shall pass the Defendant or Defendants, or the Plaintiff or Plaintiffs shall be nonsuited, or shall discontinue such Action or Suit, or if Judgment shall be given against such Plaintiff or Plaintiffs upon Demurrer or otherwise, then and in every such Case such Defendant or Defendants shall have Treble Costs awarded to him or them against such Plaintiff or Plaintiffs.

§ CXVI. And be it further enacted, That it shall be lawful to and for any Officer of Excise, or any Person employed in the Revenue of Excise, or any Person acting in the Aid and Assistance of such Officer or Person so employed as aforesaid, to whom such Notice shall be given as aforesaid, at any Time within One Calendar Month next after such Notice shall have been given, to tender Amends to the Person or Persons in whose Name or Names such Action or Suit shall be brought, raised, or commenced, or to the Agent or Attorney of such Person or Persons; and in Case such Amends shall not be accepted, it shall be lawful for any such Officer or Person to plead such Tender in Bar to such Action or Suit, together with the Plea of not guilty, and any other Plea or Pleas, with leave of the Court in which such Action or Suit shall be brought; and if upon Issue joined thereon the Jury shall find the Amends so tendered to have been sufficient, they shall give a Verdict for the Defendant or Defendants; and in such Case, or in Case the Plaintiff or Plaintiffs shall be nonsuited, or shall discontinue such Action or Suit, or in Case Judgment shall be given against such Plaintiff or Plaintiffs upon Demurrer or otherwise, then and in every



such Case the same Costs shall be awarded to such Defendant or Defendants as if the general Issue only had been pleaded; and if upon Issue so joined, the Jury shall find that no Amends were tendered, or that the same were not sufficient, and also against the Defendant or Defendants, on such other Plea or Pleas as aforesaid, such Jury shall give a Verdict for such Plaintiff or Plaintiffs, with such Damages as they shall think proper, together with Costs of Suit.

§ CXVII. And be it further enacted, That in Case any such Officer of Excise, or any Person employed in the Revenue of Excise, or any Person acting in the Aid and Assistance of such Officer or Person so employed as aforesaid, shall neglect to tender Amends, or shall have tendered insufficient Amends before Action or Suit brought, raised, or commenced, it shall be lawful for the Defendant or Defendants, by leave of the Court in which such Action or Suit shall be brought, raised, or commenced, at any Time before Issue joined, to pay into Court such Sum of Money as such Defendant or Defendants shall think fit, whereupon such Proceedings, Orders, and Judgments shall be had, made, and given in and by such Court, as in other Actions where the Defendant is allowed to pay Money into Court.

§ CXVIII. Provided always, and be it enacted, That no such Plaintiff or Plaintiffs shall, on the Trial of any such Action or Suit, be permitted to produce any Evidence of any Cause of Action, except such as shall be contained and set forth in such Notice as aforesaid, nor shall recover any Verdict against any such Officer or Person as aforesaid, unless it shall be proved on the Trial of such Action or Suit that such Notice was given: and the Defendant or Defendants in such Action or Suit shall in Default of such Proof recover a Verdict with such Costs as aforesaid.

§ CXIX. And be it further enacted, That in Case any Information shall be commenced and brought to Trial or hearing for the Condemnation of any Goods, Commodities, or Chattels seized as forfeited under or by Virtue of this Act, or any other Act or Acts of Parliament relating to the Revenue of Excise, wherein a Verdict or Decision shall be given or made for the Claimant or Claimants thereof, and it shall appear to the Judge or Court before whom the same shall be tried or heard that there was a probable Cause of Seizure, such Judge or Court shall certify upon the Record or other written Proceedings on such Information, that there was a probable Cause for making such Seizure, and in such Case the Officer of Excise, or Person who made or assisted in making such Seizure, shall not be liable to any Action, Indictment, or other Suit or Prosecution on Account of such Seizure, or of the Detention of any such Goods, Commodities, or Chattels; and in Case any Action, Indictment, or other Suit or Prosecution shall be brought to Trial or hearing against any Officer of Excise or Person, on Account of the seizing of any such Goods, Commodities, or Chattels, or of the Detention thereof (whether any Information shall have been or shall be brought to Trial or hearing for the Condemnation of the same or not), and a Verdict or Sentence shall be given thereupon against the Defendant or Defendants therein, if the Court or Judge before whom such Action, Indictment, or other Suit or Prosecution shall be tried or heard, shall certify in like Manner as aforesaid that there was probable Cause for such Seizure, then and in such Case the Plaintiff or Plaintiffs therein, besides the Goods, Commodities, and Chattels respectively so seized or the Value thereof, shall not be entitled to more than Twopence Damages, nor to any Costs of Suit, and the Defendant or Defendants therein shall not be imprisoned, nor be fined more than One Shilling thereon.

§ CXX. Complaints of Overcharge may be heard and determined by any Three Commissioners or Two Justices, in their respective Jurisdictions, within Twelve Months after.

### *Actions of Damages.*

If Verdict for Plaintiff, Damages and Costs may be given.

Defendant may pay Money into Court before Issue joined.

No Evidence to be given of a Cause of Action not expressed in the Notice.  
*Supra*, § 114.

On Trial for Seizures, if the Judge shall certify probable Cause of Seizure, the Officer shall not be liable to Action.

In Actions against Officers, if the Judge shall certify, Plaintiff shall not be entitled to more than 2d. Damages.

*See* 43 G. 3, c. 141, as ext. by 9 G. 4, c. 29, § 26, as to actions against Magistrates; *Infra*, Book II., Court of Session.

*Rep. by* 4 & 5 W. 4, c. 51, § 26; and 4 V., c. 20, § 33.

[Expired, so far  
as applicable.]

# 11° GEORGII IV. & 1° GULIELMI IV.

## CAP. LXIX.

*An Act for uniting the Benefits of Jury Trial in Civil Causes, with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the Judicial Establishments of Scotland.*—[23d July 1830.]

§ XLII. Two Barons of the Court of Exchequer to be reduced.

# 2° GULIELMI IV. REGIS.

## CAP. LIV.

[Expired.]

*An Act for making Provision for the Dispatch of the Business now done by the Court of Exchequer in Scotland.*—[23d June 1832.]

§ I. No Successors to be appointed to the present Barons.—II. Discharge of Duties of the Court upon Retirement or Death of the several Barons.—III. After Retirement or Death of the last Baron, Duties to be discharged by a Judge of the Court of Session.—IV. Power given to Judge of the Court of Session to grant Warrant for issuing Commissions.—V. As to the Annuities to be granted to the Chief and other Barons.—VI. Salary to Judge of the Court of Session to be appointed in place of the Barons of Exchequer.

# 4° & 5° GULIELMI IV. REGIS.

## CAP. LI.

[First Amended  
Excise Regulation  
Act, 1834.—  
Am. 7 & 8 G. 4,  
c. 58; See 4 V., c.  
20.]

*An Act to amend the Laws relating to the Collection and Management of the Revenue of Excise.*—[13th August 1834.]

§ XVIII. Repeal of 7 & 8 Geo. 4, c. 53, § 66, as to Mode and Time of laying Informations, etc.

Information to be  
exhibited before  
Commissioners of  
Excise or Justices  
within Four  
Months after  
Offence committed  
or Seizure made;

§ XIX. And be it further enacted, That every Information for the Recovery of any Penalty or for the Condemnation of any Seizure, shall be exhibited before the Commissioners of Excise, or Justice or Justices of the Peace respectively, within Four Calendar Months next after the Offence or Offences alleged in such Information shall have been committed, or the Goods, Commodities, Chattels, or Things therein alleged to have been forfeited shall have been seized; and a Notice in Writing of such Information having been so exhibited shall be given to the

Person against whom the same shall have been exhibited within One Week next after the exhibiting of such Information; and the Commissioners of Excise, or Justice or Justices of the Peace, before whom any such Information shall be exhibited, are hereby respectively authorized and required to summon every Person against whom any such Information shall have been exhibited to appear and plead to and to attend the hearing of such Information at a Time and Place to be named in such Summons, which Summons shall be served upon every such Person or Persons Ten Days at the least before the Time appointed in such Summons, and which Summons may be added to or may include such Notice as aforesaid, or may be separate and apart therefrom, and be served at another and different Time, subsequent to the Delivery of such Notice, at the Option of the Prosecutor: Provided always, that where such Information shall be exhibited for the Recovery of double the Value of any Duty or Duties neglected to be paid or cleared off, it shall be sufficient if such Summons be served Twelve Hours at the least before the Time appointed in such Summons: And provided also, that in all Cases it shall be deemed and taken to be sufficient Delivery and Service of any such Notice and Summons as aforesaid, if a Copy of the same be left at or upon the Place used or occupied by any such Person or Persons respectively for carrying on his or their Trade or Business, or at the Building or Place where any such Offence shall have been committed or such Seizure made, or at the Place of Residence, or with the Wife or Child or Servant of any such Person or Persons, the same being directed to such Person or Persons by the right or assumed Name or Names of such Person or Persons; or where any such Offence shall have been committed or discovered in transit, or any Seizure made in Transit, and the Place of Business or Residence of the Offender shall be unknown to the Person discovering such Offence or making such Seizure, it shall be sufficient if such Notice and Summons, or a Copy thereof, be affixed at or upon such conspicuous Part of the Office of Excise next to where such Offence shall have been committed or discovered, or Seizure made, directed to such Offender or Offenders by his or their right or assumed Name or Names, if the same shall be known to the Prosecutor, and if not known, without any Name or Names.

§ XX. And whereas Doubts have been entertained whether, under the Provision of the said recited Act authorizing the Mitigation of Penalties to one-fourth, the Justices of the Peace respectively, before whom any Information may be exhibited for the Recovery of double the Value of any Duty or Duties of Excise neglected to be paid or cleared off, have not Power to mitigate the Penalty of such double Value; for determining of which Doubts be it further enacted, That nothing in the said recited Act, or in any other Act or Acts relating to the Revenue of Excise, shall be construed to authorize or empower any Justices of the Peace, on the hearing and determining of any Information for the Recovery of double the Value of any Duty or Duties of Excise neglected to be paid or cleared off, to mitigate the said Penalty of the double Value of such Duties, but the said Justices shall in all Cases convict the Defendant or Defendants in the full Penalty of double the Value of the Duties, which shall be proved to have been neglected to be paid and cleared off, and shall give Judgment accordingly; and no Justice of the Peace before whom any Person having been arrested and detained under any Act or Acts relating to the Revenue of Excise, and liable to the Payment of any Penalty, and in Default of the immediate Payment thereof to be committed to Prison for a limited Period, shall have any Power or Authority to mitigate such Penalty, except where a special Power for the Mitigation of such Penalty shall be given; anything in the said re-

#### *Informations.*

and Parties to be summoned.

19 & 20 V., c. 56, § 5-11.

Id., § 6.

Commissioners of Excise and Justices not authorized to mitigate the Penalty of double Duty for Non-payment of Excise Duties.

Am. 7 & 8 W. 4, c. 53, § 78.

*Penalty on immediate Arrest not to be mitigated.*

19 & 20 V., c. 56, § 12.

*Complaints.*

cited Act, or any other Act or Acts relating to the Revenue of Excise notwithstanding.

§ XXI. Expenses of Prosecution before Commissioners of Excise or Justices of the Peace may be ordered to be paid out of the Revenue.—XXII. In case of the Death, Removal, or Absence of any Officer of Excise in whose Name any Information may have been exhibited, the Proceedings may be carried on by any other Officer.—XXIII. If there shall not be Twenty Days between giving Notice of Appeal and the next Quarter Sessions, the Appeal shall be to the following Sessions.—XXIV. Witnesses tendered for Examination at the original hearing before Commissioners of Excise or Justices, may be examined on hearing the Appeal.—XXV. Persons liable to Arrest under the Laws of Excise, not being detained at the Time, may be afterwards arrested.—XXVI. Repeal of 7 & 8 Geo. 4, c. 53, § 120, as to Complaints of Over-charge.

Complaints of  
Over-charges and  
Over-payments.

*Am. 7 & 8 G. 4, c. 53, § 120.*

*Am. by 4 V., c. 20, § 3.*

§ XXVII. And be it further enacted, That it shall be lawful for the Commissioners of Excise, or any Three or more of them, within the Limits of the chief Office of Excise, and for any Two or more Justices of the Peace in any other Part of the United Kingdom, within whose Jurisdiction respectively any Person chargeable with or liable to the Payment of any Duty of Excise shall have been charged with or paid such Duty, upon Complaint to them respectively made by any Person or Persons of any Over-charge made by any Officer of Excise, or of any Over-payment made by any such Person, within Twelve Calendar Months next after the making of such Over-charge or Over-payment, and also in any Case in which by any Act of Parliament relating to the Revenue of Excise any Persons shall be entitled to any Return of any Duty of Excise paid by or on behalf of such Person, upon the like Complaint by such Person within the Time in that behalf respectively limited by Law for exhibiting such Complaint, and such Commissioners and Justices are hereby respectively authorized and required in every such Case to hear, adjudge, and determine such Complaints, and to examine the Witness or Witnesses upon Oath who shall be thereupon produced, as well on behalf of the Person making Complaint as on behalf of his Majesty and of all Parties therein concerned, and shall thereupon, by Warrant under their Hands, discharge or acquit the Complainant of so much of such Over-charge or Over-payment as shall be made out and proved before such Commissioners of Excise or Justices of the Peace respectively to have been over-charged or over-paid, or wrongly paid, or shall order such Amount of Duty as the Party shall appear to be entitled to have returned to him to be returned and paid; and if any Person in whose favour any such Judgment shall be given shall before Acquittal of any Over-charge have paid any Money for or in respect of such Over-charge, and in case of any Over-payment or Order to Return any Duty of Excise, to a Return of which the Party may be entitled, the Commissioners of Excise shall and they are hereby required, upon such Acquittal or Order as aforesaid, to repay to such Person or Persons out of the Public Monies in their Hands, or at their Discretion to allow out of the next Duties becoming payable by such Person or Persons, so much Money as shall be specified in such Judgment or Order as over-charged, over-paid, or wrongly paid, or to be returned, anything in any Act or Acts to the contrary notwithstanding: Provided always, that no such Complaint shall be heard before the said Commissioners of Excise unless the same shall be entered by or on behalf of the Complainants in a Book to be kept for that Purpose in the Office of the Solicitor of Excise, at the chief Office of Excise, stating the Particulars thereof, and the Name and Place of Residence or Place of Business of such Complainant; and upon every such Complaint being so entered, not less than Six Days' Notice shall be given by

the Commissioners of Excise of the Time and Place by them appointed for the hearing of such Complaint; and if such Complainant shall not appear at the Time and Place appointed for the hearing of any such Complaint, it shall be lawful for the said Commissioners, or any Three or more of them, to dismiss such Complaint, upon Proof of such Notice of the Time and Place appointed for the hearing of such Complaint having been given to such Complainant, or left at the Place mentioned in such Complaint Book as aforesaid, as the Place of Residence or Place of Business of such Complainant; and no such Complaint shall be heard before any Justice of the Peace unless a Notice in Writing of the Time and Place of hearing thereof, shall be given to the Collector of Excise in whose Collection, or to the Supervisor of Excise in whose District the Subject-matter of Complaint shall have arisen, Eight Days at least before the Time appointed for the hearing of such Complaint, which Notice shall contain and set forth the exact Sum which is complained of as being an Over-charge, and the Date when the Charge was made on which such Over-charge is said to have arisen, or the exact Sum complained of as being an Over-payment, and the Date when such Over-payment was made, or the exact Amount of Duty claimed to be allowed or returned, and on what Account, as the Case may be; and in every Case respectively the Ground of Complaint of such Over-charge or Over-payment, or Claim of Return or Allowance of Duty, shall be set forth in such Complaint: Provided also, that the Payment of any Duty with which any such Complainant as aforesaid shall have been charged, or any Proceedings for the Recovery or Payment of any such Duty, shall not be delayed or suspended by reason of the making of any Complaint of Over-charge of such Duty, or of the same being depending.

§ XXVIII. And be it further enacted, That any Penalty or Forfeiture incurred under any Act or Acts of Parliament relating to the Revenue of Customs may be sued for and recovered by Order of the Commissioners of Excise, and in the Name of an Officer of Excise, as well as by Order of the Commissioners of Customs, and in the Name of an Officer of Customs; and where any Election or Option is or shall be given by any such Act or Acts to the Commissioners of Customs, which of Two Penalties shall be sued for, such Election or Option may be exercised by the Commissioners of Excise, and may be averred in the Information to have been made by such last-mentioned Commissioners, and such Averment shall be deemed and taken to be sufficient Proof of such Order and of such Election or Option, without any further Evidence thereof.

Offences under the Customs Laws may be sued for by Order of Commissioners of Excise, and in the Name of Officers of Excise.

See 16 & 17 V., c. 107.

## 5° & 6° GULIELMI IV. REGIS.

### CAP. XLVI.

*An Act to amend, until the End of the next Session of Parliament, an Act of the Second Year of His present Majesty, for making Provision for the Despatch of the Business now done by the Court of Exchequer in Scotland.*—[31st August 1835.]

[Expired.]

§ I. In Case of Indisposition of remaining Baron of Court of Exchequer, Judge of Court of Session to try Suits in the Exchequer Court.—II. Duration of Act.

[Expired.]

## 7° GULIELMI IV. &amp; 1° VICTORIÆ.

## CAP. LXV.

*An Act to render valid certain Acts done in the Performance of Duties in the Court of Exchequer in Scotland, by the Lord Ordinary on the Bills in the Court of Session, and for the better Regulation of the said Court of Exchequer.—*  
[15th July 1837.]

§ I. Certain Acts done by Lord Ordinary declared valid.—II. The Lord Ordinary may in future perform the Duties of the Court of Exchequer in certain Cases.—III. Rights exercised by the Court of Exchequer to be vested in the Treasury.—IV. Recited Act 5 & 6 W. 4, c. 46, made perpetual.

## 2° &amp; 3° VICTORIÆ REGINÆ.

## CAP. XXXVI.

[Expired, as far as applicable.]

*An Act to regulate the Duties to be performed by the Judges in the Supreme Courts of Scotland, and to increase the Salaries of certain of the said Judges.—*[29th July 1839.]

§ I.—III. Relate to Court of Justiciary.—IV. Two Judges to be appointed to perform the Duties of the Exchequer.—V. Judges performing the Duties of the Court of Exchequer, in Cases of Importance to state Questions of Law for Opinion of the other Judges.—VI. Her Majesty may accept Resignation of a Judge of Justiciary or Exchequer.

## 4° VICTORIÆ REGINÆ.

## CAP. XX.

[Second Amended Excise Regulation Act, 1841.

Am. 7 &amp; 8 G. 4, c. 53; and 4 &amp; 5 W. 4, c. 51.]

All Goods subject to Duties of Excise, and all Materials, Machinery, Vessels, and Implements used in the Manufacture, to be liable for all Duties, Arrears, and Penalties incurred whilst in the Possession of the Trader.

*An Act to alter and amend certain Laws relating to the Collection and Management of the Duties of Excise.—*  
[18th May 1841.]

§ XXIV. And be it enacted, That all Goods and Commodities for or in respect of which any Duty of Excise is or shall be by Law imposed, and all Materials and Preparations from which any such Goods are made, and all Stills, Backs, Vats, Coppers, Cisterns, Tables, Presses, Machines and Machinery, Vessels, Utensils, Implements, and Articles for making or manufacturing or producing any such Goods and Commodities, or preparing any Materials, or by which the Trade or Business in respect of which the Duty is or shall be imposed shall have been or shall be carried on, in the Custody or Possession of the Person carrying on such Trade or Business, or in the Custody or Possession of any Factor, Agent, or other Person in Trust for or for the Use of the Person carrying on such Trade or Business, shall be and remain sub-

ject and liable to, and the same are hereby made chargeable with, all the Duties of Excise which, during the Time of any such Custody or Possession, shall be or shall have been charged or become chargeable on or be in Arrear or owing from or by the Person carrying on such Trade or Business; and shall also be and remain subject and liable to all Penalties and Forfeitures which during any such Custody or Possession shall be or shall have been incurred by the Person carrying on such Trade or Business, for any Offence by such Person committed against any Act or Acts relating to the Revenue of Excise; and all such Goods, Materials, and Preparations, Stills, Backs, Vats, Coppers, Tables, Presses, Machines, Machinery, Vessels, Utensils, and Articles shall be and remain subject and liable to all such Duties, Penalties, and Forfeitures, by whomsoever and by whatsoever Title or Conveyance the same may be claimed; and it shall be lawful to levy thereon such Duties, Penalties, and Forfeitures, and for that Purpose to seize, take, sell, remove, and dispose of the same as the Goods and Chattels of the Debtors or Offenders under any Writ or Writs of Extent, Execution, or other Process or Warrant for the Recovery or Enforcement of any such Duties, Penalties, and Forfeitures: Provided always, that where any Goods or Commodities subject to any Duty of Excise shall have been taken Account of and duly charged with Duty by the Proper Officer of Excise, and shall, after having been so taken Account of and charged with Duty, be fairly and bonâ fide, and in the regular and ordinary Course of Trade, sold, disposed of, and delivered into the Possession of the Purchaser thereof, for a full and valuable Consideration, before the Teste or issuing of any Process or Warrant for the Recovery of any Duty or Penalty, such Goods and Commodities in the Possession of such fair and bonâ fide Purchaser shall be discharged from such Liability as aforesaid; but in all Cases where any Goods or Commodities shall be seized in the Custody or Possession of any Person, and shall be claimed to be discharged from such Liability, as having been fairly and in the regular and ordinary Course of Trade purchased, Proof of the Fairness and bonâ fides of the Purchase, and of the same having been in the regular and ordinary Course of Trade, and of the Sale and Delivery having been made before the Teste or issuing of the Process or Warrant under which such Goods or Commodities shall be seized, shall lie on the Claimer thereof.

§ XXV. And be it enacted, That so much of the said recited Act of the Eighth Year of the Reign of his said late Majesty King *George* the Fourth as enacts "That it shall be lawful for the Lord High Treasurer, or any Three or more of the Commissioners of the Treasury, from Time to Time, under his Hand and Seal, or under their Hands and Seals, to appoint such and so many Persons to be Commissioners of Appeal in *England*, as he or they shall deem advisable, for and on behalf of his Majesty, his Heirs and Successors, for the Purpose of hearing Appeals, as hereinafter mentioned, from any Judgment given by the Commissioners of Excise upon any Information exhibited before them, with such Salaries respectively, payable to such Commissioners of Appeal out of the Revenue of Excise, as the Lord High Treasurer, or any Three or more of the Commissioners of the Treasury, may in that behalf order and direct; and any Three or more of such Persons so appointed shall constitute a Court of Appeal for all such Purposes as hereinafter mentioned," and so much of the said recited Act as gives any Appeal from any Judgment of the Commissioners of Excise to the said Commissioners of Appeal, shall be and the same is hereby repealed.

§ XXVI. And be it enacted, That in Case any Officer of Excise who shall exhibit any Information, or any Person against whom any Information shall have been exhibited, or who shall appear and claim any Goods, Commodities, or Chattels alleged to be forfeited in any Infor-

### Liability of Goods.

Proviso, that where Goods duly charged with Duty have been sold and delivered in the fair and ordinary Course of Trade, the Liability to cease.

Repeal of 7 & 8 G. 4, c. 53, § 81.

Persons aggrieved by Judgment of the Commissioners of Excise may ap-

*Miscellaneous.*

peal to the Barons  
of the Exchequer.  
*Am. by 19 & 20 V.,  
c. 56, § 17.*

Summons may be  
served by Officers  
of Excise.

*See 19 & 20 V., c.  
56, § 5.*

Seizures under  
L.15 Value, unless  
claimed in One  
Month, to be con-  
demned.

*Id., § 11.*

Complaint of  
Over-charge or  
Over-payment of  
Duty not to be  
made to the Com-  
missioners of Ex-  
cise or Justices of

mation exhibited before the Commissioners of Excise, shall feel aggrieved by the Judgment given thereon by such Commissioners of Excise, it shall be lawful for such Officer, or such Person or Persons, upon giving and lodging such Notices as are by the said recited Acts required, to appeal from such Judgment to the Barons of her Majesty's Court of Exchequer; and it shall be lawful thereupon for any One or more of the said Barons, and they are hereby authorized and required, upon being served with Notice of such Appeal, at such Place and at such Time as he or they shall appoint, to hear, adjudge, and finally determine such Appeal; and the Baron or Barons of the Exchequer by whom such Appeal shall be heard, adjudged, and determined, shall have all the same Powers and Authorities as are by the said recited Acts given to the Commissioners of Appeal; and all the Enactments, Rules, Regulations, and Provisions in the said recited Acts contained in respect to an Appeal to the Commissioners of Appeal, shall, except as altered or varied by this Act, be in full Force and Effect, and shall be observed and complied with in all respects in the bringing, lodging, hearing, adjudging, and determining any such Appeal to the Barons of her Majesty's Court of Exchequer, and enforcing any Judgment given thereon.

§ XXXI. And be it enacted, That any Summons, Notice, Order, or other Proceeding issued on any Information exhibited before the Commissioners of Excise, or any Justice or Justices, for the Recovery of any Penalty or the enforcing of any Forfeiture incurred or to be recovered or enforced under any Law or Laws of Excise, or on any Appeal against any Judgment of the Commissioners of Excise, or any Justice or Justices of the Peace, on any such Information, may be served by any Officer of Excise or other Person; and such Service shall be good and legal Service, anything in any Act or Acts to the contrary notwithstanding.

§ XXXII. And be it enacted, That all Goods, Commodities, Chattels, and Things, not exceeding Fifteen Pounds in Value, which shall be seized as forfeited, under the Provisions of any Act or Acts relating to the Revenue of Excise, and which shall not within the Space of One Month after the Seizure thereof be claimed by the Owner, by Application in Writing either to the Commissioners or the Collector or Supervisor of Excise, or to the Officer seizing or in whose Custody the Goods, Commodities, Chattels, or Things seized shall be, shall be absolutely forfeited, as fully and effectually as if the same had been condemned by Judgment of Condemnation of her Majesty's Court of Exchequer; and in all Cases in which any such Goods, Commodities, Chattels, or Things seized shall be claimed by any Person within such Time as aforesaid, such Proceedings shall be had for the Condemnation thereof as in the Case of other Goods, Commodities, or Chattels, or Things seized as forfeited under any Law or Laws of Excise: Provided always, that nothing herein contained shall extend or be construed to extend to restrict or affect the Forfeiture of any Goods, Commodities, Chattels, or Things seized under the Provisions of an Act passed in the Second Year of the Reign of his late Majesty King William the Fourth, to consolidate and amend the Laws for suppressing the illicit making of Malt and Distillation of Spirits in Ireland.

XXXIII. And be it enacted, That no Complaint of any Over-charge or Over-payment of any Duty of Excise shall be made to the Commissioners of Excise within the Limits of the chief Office of Excise, or to any Justices of the Peace in any other Part of the United Kingdom, by any Person liable to the Payment of any Duty of Excise, in any Case where the Subject-matter of such Complaint shall be a Question whether any Goods or Commodities are Goods or Commodities liable to be charged



with a Duty of Excise, or are liable to a higher or lower Rate of Duty, or as to the Mode or Manner of charging the Duty of Excise on any Goods or Commodities; and it shall not be lawful for the said Commissioners or Justices to try or decide any such Question on any such Complaint, but all Proceedings thereon, allowing any Over-charge or Over-payment of Duty, and all and every Warrant issued in Pursuance thereof, shall be null and void, anything in the said recited Act of the Fifth Year of the Reign of his late Majesty King *William* the Fourth notwithstanding: Provided always, that where any Person charged with any Duty of Excise shall question the Legality of the Charge, on the Ground that the Goods or Commodities charged are not Goods or Commodities liable to a Duty of Excise, or are subject to a different Rate of Duty than the Rate of Duty charged, or on account of the Mode or Manner in which such Duty shall have been charged, and shall, within Six Days after the Return of the Officer of Excise, give Notice to the Commissioners of Excise, or to the Collector or Supervisor of Excise, within the Limits of whose Business such Charge shall have been made, of his Objection to the Charge, and the Ground of such Objection, such Person shall not be concluded by the Return or Charge of the Officer of Excise, but such Person shall be at liberty, on any Information filed or other Proceedings taken to recover the Payment of any Duty or Portion of Duty charged on and refused to be paid by him, in his Defence to dispute such Charge, and his Liability to the Payment of the Amount of Duty specified therein, or of any Portion thereof.

#### Complaints.

the Peace in Cases where the Question shall be the Liability of Goods to Duty or the Rate of Duty, or the mode of charging the Duty.

*Am. 4 & 5 W. 4, c. 51, § 27.*

*See 19 & 20 V., c. 56, § 8.*

## 10° & 11° VICTORIÆ REGINÆ.

### CAP. LI.

*An Act to amend the Practice in Scotland with regard to Crown Charters and Precepts from Chancery.*—[25th June 1847.]

§ I. Signatures and Precepts to Chancery abolished.—II. Charters to be obtained by lodging a Draft thereof and Note along with the Title-deeds.—III. Draft Charter to be revised.—IV. Rectification of Mistakes in former Titles.—V. Presenter of Signatures, etc., may refer to Copy of Charter, etc., when withheld.—VI. Amount of Crown Duties to be fixed.—VII. Clerk's Fees.—VIII. Copy of revised Draft to be furnished to the Party.—IX. If no Objections, the revised Draft to be attested and the Charter prepared.—X. Charters may be applied for at any Time.

§ XI. It shall be lawful for the Person applying for the Charter, if dissatisfied with the Draft revised as aforesaid, to state Objections thereto or against the Amount of Duties and Composition thereon marked as payable; and such Objections shall be set forth in a short written Note of Objections, without Argument, to be lodged in the Office of the Presenter of Signatures, subscribed by the Agent of such Person, and the Date of lodging such Note of Objections shall be marked thereon by the Presenter of Signatures or his Clerk.

§ XII. Where any Note of Objection shall be so lodged, such Note shall, together with the whole other Proceedings, be laid before the said Judges, or any One of the said Judges; and the said Judges or Judge shall hear the Person so objecting by himself, his Counsel or his Agent, being a Writer to the Signet, and shall also hear any Report or State-

[Crown Charters Act, 1847. By 19 & 20 V., c. 56, § 18, the Duties of the Exchequer in relation to Crown Charters are devolved on the Lord Ordinary in Exchequer.]

Objections, if any, to be by a Note.

Objections, how to be disposed of.

Revisal of Charter.

ment by the Presenter of Signatures; and wherever it shall appear to the said Judges or Judge that the said Objections should to any Extent receive Effect, they or he shall cause such Alterations and Corrections as shall appear to them or him proper, either with reference to the Terms of the said Draft, or to the Amount of Duties or other Payments marked thereon as payable, to be made on such Draft, or to be expressed in a separate Paper marked as relative thereto, and shall authenticate such Draft and relative Paper with their or his Signature; and the said Judges or Judge shall at the same Time pronounce a Judgment or Deliverance, to be written on the Note of Objections, appointing the Charter, as so altered and corrected, to be prepared and executed; and the Judgment or Deliverance so pronounced shall form a valid and sufficient Warrant for the Preparation in Chancery of the Charter as altered and corrected.

## Procedure if Objections repelled.

§ XIII. Wherever the said Judges or Judge shall be of Opinion that the said Objections should not to any Extent receive Effect, they or he shall pronounce a Judgment, to be written on the said Note of Objections, repelling the said Objections; and the Judgment or Deliverance so pronounced shall form a valid and sufficient Warrant for the Preparation in Chancery of the Charter as revised by the Presenter of Signatures in Manner before directed.

## Refusal to revise, how to be complained of.

§ XIV. Wherever the Presenter of Signatures aforesaid shall be of Opinion that the Person applying for the Charter has not produced a Title sufficient to show that he has Right to obtain the same, the Presenter of Signatures shall mark on the said Draft that the same is refused for Want of sufficient Production of Titles, adding thereto his Signature and the Date of affixing the same; and his Clerk shall intimate such Refusal to the Agent of the said Person, and shall, on Demand, return the Draft to such Agent; and in every such Case it shall be competent for the Person who shall have applied for the Charter to bring such Refusal under Review of the said Judges or Judge by a Note of Objection lodged in Manner aforesaid; and the said Judges or Judge shall, after considering such Note and hearing Parties thereon in Manner aforesaid, sustain or repel the Objection, or pronounce such Judgment thereon as shall be just; and if the said Judges or Judge shall be of Opinion that a sufficient Title has been shown to authorize the Charter being granted, they or he shall in that Case remit to the Presenter of Signatures to proceed with the Revisal of the Draft in Manner before mentioned.

§ XV. Charter, as revised, to be ingrossed and delivered.—XVI. Charter to be valid.—XVII. Ceremony of Resignation abolished.—XVIII. Precepts from Chancery to Heirs specially served, how to be obtained.—XIX. Precepts may also be granted to Heirs holding only a general Service.—XX. Record of Precepts to be kept.—XXI. Charters of Confirmation may be granted, combined with Precepts for infesting Heir.—XXII. Charters of Novodamus, how to be obtained.—XXIII. Lodging Draft Charter with Note and recording Note to be equivalent in Competition to presenting a Signature, etc.

§ XXIV. Crown Charters, and Charters by and on behalf of the Prince and Steward of Scotland, may be in the Forms given in Schedule (C).—XXV. Charters to be in the English Language.—XXVI. Conditions of Entail may be referred to as already in the Register of Entails or Register of Sasines.—XXVII. Real Burdens may be referred to as already in the Register of Sasines.—XXVIII. Exchequer Judges to frame Regulations.—XXIX. Presenter of Signatures, if required, to discharge Duties of Sheriff.—XXX. Additional Allowance to Presenter of Signatures.—XXXI. Salary to be regulated by Commissioners of the Treasury.—XXXII. Compensation, how to be applied for.—XXXIII. Compensation, how to be paid.—XXXIV.

Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures, etc.—XXXV. Interpretation of Act.—XXXVI.—Act may be amended, etc.

*Solicitors.*

## 15° & 16° VICTORIÆ REGINÆ.

### CAP. LXI.

*An Act to amend the Laws relating to Summary Proceedings for Penalties and Forfeitures under the Acts relating to the Excise.*—[30th June 1852.]

§ III. It shall be lawful and competent to and for any Officer of Inland Revenue, or any Person employed or authorized by the Commissioners of Inland Revenue or the Solicitor of Inland Revenue in that Behalf, to prosecute, conduct, or defend any Complaint, Information, or other Proceeding to be heard or determined by or before any Justice or Justices of the Peace in any Part of the United Kingdom relating to any Duty, Matter, or Thing under the Care or Management of the said Commissioners, whether such Officer or Person shall be admitted and enrolled as an Attorney, Solicitor, Advocate, or Writer to the Signet in any Court of Law or Equity or not, anything in any Act to the contrary thereof notwithstanding.

[Third Amended Excise Regulation Act. Amends 7 & 8 G. 4, c. 53; 4 & 5 W. 4, c. 51; and 4 V., c. 20.] Officers of Inland Revenue, or Persons employed by the Commissioners or Solicitor, may conduct Proceedings before Justices. See as to Customs Cases, 16 & 17 V., c. 107, § 823; 4 & 5 W. 4, c. 51, § 28.

## 16° & 17° VICTORIÆ REGINÆ.

### CAP. CVII.

*An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom, and of the Isle of Man; and certain Laws relating to Trade and Navigation and the British Possessions.*—[20th August 1853.]

§ CCLXIII. In all Suits or Proceedings at the Suit of the Crown for the Recovery of any Duty or Penalty, or the Enforcement of any Forfeiture under this or any Act relating to the Customs, the Parties thereto shall be entitled to recover Costs against each other in the same Manner as if such Suits or Proceedings were conducted and had between Subject and Subject, and the like Amendments may be made in all such Proceedings by the Judge or Court as may now be made in Civil Actions; and all Duties, Penalties, and Forfeitures incurred under or imposed by this or any other Act relating to the Customs, and the Liability to Forfeiture of any Goods seized under the Authority thereof, shall and may, except as is herein-after provided, be sued for, prosecuted, determined, and recovered by Action of Debt, Information, or other appropriate Proceeding in the Superior Courts of Common Law at Westminster, Dublin, or Edinburgh, or in the Royal Courts of the Islands of Guernsey, Jersey, Alderney, Sark, or Man, in the Name of the Attorneys-General for England or Ireland respectively, or of the Lord Advocate of Scotland, or of some Officer of Customs or Excise, and for the Recovery or Enforcement of any Penalty or Forfeiture, by Information in the Name of some Officer of Customs or Excise, before one or more Justice or Justices in the United Kingdom, or before any

["The Customs Consolidation Act, 1853." Am. by 17 & 18 V., c. 122; and 18 & 19 V., c. 96. See 19 & 20 V., c. 56.]

*As to the Course of Procedure for recovering Penalties and enforcing Forfeitures under this or any other Act relating to the Customs.*

Jurisdiction. Penalties and Forfeitures, how to be sued for.

*As to Costs, see 18 & 19 V., c. 90; 19 & 20 V., c. 56, § 24.*

*Recovery of Penalties.*

Proviso where the Duties and Penalties sought to be recovered shall not exceed L.100.

Where Suits for Recovery of Duties and Penalties, though not exceeding L.100, may be prosecuted before a superior Tribunal.

Proceedings at the Option of Defendant to be instituted in superior Courts, though the Sum claimed for Duties and Penalties does not exceed L.100.

Justices Jurisdiction in Consent where the Sums claimed shall exceed L.100.

Governor, Deputy-Governor, or Deemster, or other Magistrate, in the *Isle of Man* and the *Channel Islands*: Provided always, that where any Goods shall have been seized in the United Kingdom, with regard to which the Amount of Duties or Penalties claimed by the Crown shall not exceed the sum of One hundred Pounds, such Seizure or Penalties shall not be sued for or enforced in any of the said Superior Courts, but by Information before any One or more Justice or Justices, Governor, Deputy-Governor, Deemster, or other Magistrate as aforesaid, or by Information, Suit, or other appropriate Proceeding in the County Courts, if in *England*, the Assistant Barristers Court, if in *Ireland*, and the Sheriffs Court, if in *Scotland*, for which Purposes the said Courts respectively shall have Jurisdiction in such Cases to the Extent of One hundred Pounds, with Power to enforce or mitigate any Penalty sought to be recovered, unless upon Consideration of the Facts and Circumstances of, or the Questions of Law involved in any Case so excepted from the Jurisdiction of the Superior Courts of Common Law, it shall appear to the Commissioners of Customs desirable that such Case should be tried in a Superior Court, in which case the said Commissioners shall certify their Opinion that it is a proper Case to be tried in the said Superior Courts to the Commissioners of the Treasury, who may thereupon make and issue an Order to the said Commissioners of Customs, authorizing them to bring such Case in such Superior Court, and the Purport of such Order shall be endorsed on any Process to be issued out of such Court in such Case at the Suit or Prosecution of the Crown in the Words following: "By Order of the Commissioners of her Majesty's Treasury, this Case appearing to them to be a fit Case to be tried in her Majesty's Court of Exchequer," and the same shall confer Jurisdiction on such Superior Court to try such Case.

§ CCLXIV. It shall be optional for the Defendant in any Case, except as herein-after provided, where the Amount of Duties or Penalties claimed by the Crown shall not exceed the Sum of One hundred Pounds, to require that, instead of proceeding against him on account thereof by Information before any Justice or Justices as aforesaid, the Proceedings shall be brought in a Superior Court of Law, and upon the Request in Writing of such Defendant, delivered to the Officer by whom the Goods shall have been seized, or to the Solicitor of Customs, such Proceedings may be instituted in a Superior Court, for which Purpose, on Notice by the Defendant to the Justice or Justices if Proceedings have been already commenced before them, such Justice or Justices shall adjourn the Case for One Week to afford the Defendant an Opportunity of delivering such Request; and in order to confer Jurisdiction on such Superior Court, it shall be sufficient to state such Request on the Back of any Process to be issued in such Case, in the Words following, "On the Requisition of Defendant, who prefers a Trial by one of her Majesty's Superior Courts of Law to a Trial before Justices," and such Endorsement on the Process, signed by the Solicitor of Customs, shall be Evidence to the Court of the same, notwithstanding the Provisions herein-before contained: Provided that in any Case where Proceedings shall have been already commenced before any Justice or Justices, and the Defendant shall be under Bail or Recognizance to appear before such Justice or Justices, or in Custody for Default of such Bail, such Proceedings shall not be removed, but such Justice or Justices shall hear and determine the Case.

§ CCLXV. If any Suit or Prosecution for the Recovery or Enforcement of any Penalty or Forfeiture, in which the Amount of Duties or Penalties claimed by the Crown shall exceed the Sum of One hundred Pounds, shall have been commenced in any of the said Superior Courts, the Commissioners of Customs, at their Discretion, may, on the Defendant's Request in Writing to the Solicitor of Customs, order such

Suit or Prosecution to be brought by Information before any Justice or Justices, whereupon such Suit or Prosecution in such Superior Court shall cease, and on the Production of an Order of any Two or more Commissioners of Customs directing the bringing such Proceeding before such Justice or Justices, they shall receive such Information, and in due Course proceed to hear and determine the same.

§ CCLXVI. Whenever the Commissioners or the proper Officer of Customs shall in any Case proceed by Information against any Person or Persons for any Offence under this or any other Act relating to the Customs before any Justice or Justices, instead of instituting such Proceedings in the Court of Exchequer, and in which Case, if such Proceedings were had in such Court, a Capias might issue for the Purpose of arresting and holding the Offender or Offenders to Bail, any such Justice or Justices shall and may, on sufficient Information on Oath being given before him that the Offence charged has been committed, issue his or their Warrant to apprehend and bring such Offender or Offenders before him or any other Justice, and on his or their being so brought to require him or them to give by Recognizance Security to the Satisfaction of any such Justice in such Amount as he may deem sufficient to appear before him or any other Justice or Justices at a Time and Place appointed by him or them for the hearing of the Case, and in the Meantime in Default of such Security to commit such Offender or Offenders to Gaol, or to the Custody of the Police or other Constabulary Force.

§ CCLXVII.—Penalties joint and several may be sued for by joint and several Information.—CCLXVIII. Persons previously convicted may, on Verdict, be imprisoned in House of Correction.

§ CCXC. No Writ of Certiorari shall issue to remove any Proceedings before any Justice or Justices under this or any other Act relating to the Customs, nor shall any Writ of Habeas Corpus issue to bring up the Body of any Person who shall have been convicted before any Justice or Justices under this or any other Act relating to the Customs, unless the Party against whom such Proceeding shall have been directed, or who shall have been so convicted, or his Attorney or Agent, shall state by Affidavit in Writing duly sworn the Grounds of Objection to such Proceedings or Conviction; and upon the Return to such Writ of Certiorari or Habeas Corpus, no Objection shall be entertained by the Court other than such as shall have been stated in such Affidavit; and any Justice or Justices shall and may amend any Information, Conviction, or Warrant of Commitment for any Offence under this or any such Act at any Time, whether before or after Conviction.

§ CCXCI. No such Writ shall issue without Notice in Writing to the Solicitor for the Customs, and no Return to any such Writ shall be considered by any of Her Majesty's Courts at *Westminster, Dublin, or Edinburgh*, or the Judges thereof, unless there shall be produced to such Court or Judge an Affidavit in Writing duly sworn stating that Notice of the issuing of such Writ was given to the Solicitor of Customs or left at his Office Four clear Days before the Return of such Writ; and with respect to all such Writs there shall be an Interval of Four clear Days at least between the Day of Issue and the Day of the Return thereof, and any such Writ issuing without Notice, or not in Conformity with the Directions herein contained, shall be void to all Intents and Purposes.

§ CCXCII.—Justices Clerks Fees.—CCXCIII. Procedure for Penalties.—CCXCIV. Service of Subpoena.—CCXCV. Judgment by Default if Persons in Gaol do not appear, and plead to Information served.—CCXCVI. Execution may issue to Sheriff of any County without Reference to Venue.—CCXCVII. Impoverished Persons may sue in forma

*Appeal.*

Where Proceedings in the Court of Exchequer by Capias is waived in favour of the Subject, Justices may issue Warrant and admit to Bail.  
19 & 20 V., c. 56, § 12.

*As to the Removal of Proceedings before Justices under the Customs Laws.*

Writs of Certiorari and Habeas Corpus not to issue except on Affidavit.  
19 & 20 V., c. 56, § 17.

No Writ of Habeas without Notice to Solicitor of Customs.  
Id., § 17.

19 & 20 V., c. 56, § 5-9, etc.

*Evidence.*

19 & 20 V., c. 56,  
§ 12.

*Id.*, § 37-39.

See 4 & 5 W. 4, c.

51, § 19, 28.

*As to Proofs in  
Proceedings under  
the Customs Laws in  
any of the Courts or  
before Justices.*

Defendant's Proofs  
in Smuggling  
Cases.

Averments in  
Smuggling Cases.  
See 19 & 20 V., c.  
56 § 22; 20 & 21  
V., c. 44, § 3, 4.

Vivâ voce Evi-  
dence may be given  
that a Party is an  
Officer.

Witness compe-  
tent although en-  
titled to Part of  
Seizure or Reward.  
15 V., c. 27, § 1;  
19 & 20 V., c. 56,  
§ 40, 48.

What shall be  
deemed sufficient  
Evidence of an  
Order of the Treas-  
ury or of the  
Commissioners of  
Customs or Inland  
Revenue.  
See 4 & 5 W. 4, c.  
51, § 28.

pauperis.—CCXCVIII. Sheriff to grant special Warrant on Writ of Capias endorsed by Solicitor of Customs.—CCXCIX. Sheriff indemnified for Escape if Warrant granted at Request of Customs.—CCC. When Offenders are arrested and give Bail to the Sheriff, the Bail Bond to be assigned to her Majesty.—CCCI. Indictment to be preferred by Order of the Commissioners, and Suits to be in the Name of the Attorney-General.—CCCII. The Attorney-General or Lord Advocate may enter a nolle prosequi.—CCCIII. Within what Time Suits, Indictments, or Informations are to be exhibited.—CCCIV. Indictments or Informations may be tried in any County in *England, Scotland, or Ireland* respectively.

§ CCCV.—If in any Prosecution under the Direction of the Commissioners of Customs in respect of any Goods seized for Nonpayment of Duties, or any other Cause of Forfeiture, or for the recovering any Penalty or Penalties under this or any Act relating to the Customs, any Dispute shall arise whether the Duties of Customs or Excise have been paid in respect of such Goods, or the same have been lawfully imported or lawfully unshipped, or concerning the Place from whence such Goods were brought, then and in every such Case the Proof thereof shall be on the Defendant in such Prosecution.

§ CCCVI. The Averment that the Commissioners of Customs or Inland Revenue have directed or elected that any Information or Proceedings under this or any other Act relating to the Customs or Excise shall be instituted, or that any Ship or Boat is foreign or belonging wholly or in Part to her Majesty's Subjects, or that any Person detained or found on Board any Ship or Boat liable to Seizure is or is not a Subject of her Majesty, or that any Goods thrown overboard, staved, or destroyed were so thrown overboard, staved or destroyed to prevent Seizure, or that any Goods thrown overboard, staved, or destroyed when chased by any Ship or Boat in her Majesty's Service, or in the Service of the Revenue, were so thrown overboard, staved, or destroyed to avoid Seizure, or that any Person is an Officer of Customs or Excise, or that any Person was employed for the Prevention of Smuggling, or that the Offence was committed within the Limits of any Port, or where the Offence is committed in any Port of the United Kingdom, the naming of such Port in any Information or Proceedings shall be deemed to be sufficient, without Proof of such Fact or Facts, unless the Defendant in any such Case shall prove to the contrary.

§ CCCVII. If upon any Trial a Question shall arise whether any Person is an Officer of the Army, Navy, or Marines being duly employed for the Prevention of Smuggling, and on full Pay, or an Officer of Customs or Excise, his own Evidence thereof, or other Evidence of his having acted as such shall be deemed sufficient, and such Person shall not be required to produce his Commission or Deputation unless sufficient Proof shall be given to the contrary; and every such Officer and any Person acting in his Aid or Assistance shall be deemed a competent Witness upon the Trial of any Suit or Information on account of any Seizure or Penalty as aforesaid, notwithstanding such Officer or other Person may be entitled to the Whole or any Part of such Seizure or Penalty, or to any Reward upon the Conviction of the Party charged in such Suit or Information.

§ CCCVIII. Upon the Trial of any Issue, or upon any Judicial Hearing or Investigation touching any Seizure, Penalty, or Forfeiture, or other Proceeding under any Law or Laws relating to the Customs or Excise, or incident thereto, where it may be necessary to give Proof of any Order issued by the Commissioners of the Treasury, or by the Commissioners of Customs or Inland Revenue respectively, the Order, or any Letter or Instructions referring thereto, which

shall have been officially received by any Officer of Customs or Excise for his Government, and under which he shall have acted as such Officer, shall be admitted and taken as sufficient Evidence and Proof of such Order.

§ CCCIX. Claim to be in Name of bona fide Owners. Verified by Oath of Ownership.—CCCX. If Goods owned by more than five Coproprietors, Two may make the Oath.—CCCXI. If Goods owned by a Company or Copartnership, the Oath how to be made.

§ CCCXII. In case any Information or Suit shall be tried for any Cause of Forfeiture, and a Verdict shall be found for the Claimant, and it shall appear to the Judge before whom such Trial was had that there was a probable Cause of Seizure, such Judge shall certify on the Record that there was such probable Cause, and such Certificate shall be a Bar, and may be pleaded as such, to any Action, Indictment, or other Proceeding against the Party making such Seizure; and in case any Action, Indictment, or other Proceeding shall be brought to Trial against any Person whatsoever on account of any Seizure (whether any Information shall have been or shall be brought to Trial for the Condemnation of the same or not), and a Verdict shall be given for the Plaintiff, if the Court or Judge before whom such Action, Indictment, or other Proceeding shall be tried shall certify, on the Record or other written Proceedings, that there was probable Cause for such Seizure, then the Plaintiff shall not be entitled to more than Twopence Damages nor to any Costs, nor shall the Defendant or Defendants in any such Prosecution be fined more than One Shilling; and the Production of such Certificate, or a Copy thereof, verified by the Signature of the Officer of the Court having Charge thereof, shall be sufficient Evidence of such Certificate.

§ CCCXIII. No Action or Suit shall be commenced against any Officer of the Army, Navy, Marines, Customs, or Excise, or against any Person acting under the Direction of the Commissioners of Customs, for anything done in the Execution of or by reason of his Office, until One Month next after Notice in Writing shall have been delivered to him or left at his usual Place of Abode by the Attorney or Agent of the Plaintiff, in which Notice shall be clearly stated the Cause of Action, the Name and Place of Abode of the Plaintiff, and the Name and Place of Abode or Business of such Attorney or Agent, and the Attorney or Agent mentioned in such Notice shall be entitled to a Fee of Ten Shillings for preparing and serving such Notice; and if any Action or Suit shall be commenced against any such Officer or other Person, and no such Notice shall have been given, such Officer or other Person may call upon the Plaintiff to establish, to the Satisfaction of the Court, on Affidavits on both Sides, that such Action or Suit is brought for some Act, Matter, or Thing not done in the Execution of or by reason of his Office, and if the Plaintiff shall fail so to satisfy the Court, such Action or Suit shall discontinue: Provided always, that if the Plaintiff shall so satisfy the Court, he shall not be allowed on the Trial of such Action to give Evidence of any Cause of Action other than such as shall have been disclosed in his said Affidavit.

§ CCCXIV. Upon the Trial of any Action brought in pursuance of such Notice the Plaintiff shall not be entitled to a Verdict without proving on the Trial that such Notice had been duly served, and in Default of such Proof the Defendant in such Action shall receive a Verdict, with Costs, nor shall any such Plaintiff be at Liberty to produce any Evidence of any Cause of Action, except such as has been distinctly stated in such Notice.

§ CCCXV. It shall be lawful for any Officer or other Person to whom such Notice shall be given, at any Time within One Month after Service of such Notice as aforesaid, to tender Amends to the Plaintiff

*Actions of  
Damages.*

19 & 20 V., c. 56,  
§ 11.

In Suits on Seizure  
Judge may certify  
probable Cause in  
Bar.  
Id., § 11.

Compare 43 G. 3,  
c. 141, as ext. by  
9 G. 4, c. 29, § 26.

*As to Actions  
against Officers of  
Customs.*

One Month's No-  
tice of Action to  
Officer before  
Process.

*As to Notice and  
Limitation of Ac-  
tion and General  
Issue, see 5 & 6  
V., c. 97. Infra,  
Book II.*

Evidence limited  
to Subject in  
Notice.

Officer may tender  
Amends.

Actions of  
Damages.

Officer omitting  
to tender Amends  
may pay Money  
into Court.

Actions against  
Officers to be  
brought within  
two Months after  
Cause arises.  
See 5 & 6 V., c.  
97, § 5.

Where L.20 only  
is recovered no  
Costs to be allowed  
unless Judge  
certifies.  
See supra, § 312.

See 18 & 19 V., c.  
95, § 37.

or his Agent or Attorney, and in case such Amends be not accepted to plead such Tender in Bar of the Action, together with the Plea of "not guilty," and other Pleas, with Leave of the Court, where such Leave must be obtained pursuant to the "Common Law Procedure Act, 1852;" and if upon the Trial of such Action the Jury shall find the Amends so tendered sufficient they shall give a Verdict for the Defendant, and in such case, or in case the Plaintiff shall be nonsuited or discontinue his Action, or in case Judgment be given for such Defendant on Demurrer, then such Defendant shall be entitled to the like Costs as he would have been entitled to if he had pleaded the general Issue only; but if upon Issue joined the Jury shall find that no Amends were tendered, or that the same were insufficient, or shall find against the Defendant on such Plea or Pleas, then they shall give a Verdict for the Plaintiff, and such Damages as they shall think proper, together with Costs of Suit.

§ CCCXVI. In case any such Officer or other Person as aforesaid shall neglect to tender Amends, or shall not have tendered sufficient Amends, before the Action brought, it shall be lawful for him, by Leave of the Court in which such Action shall be brought, at any Time before the Trial of the said Action, to pay into Court a Sum of Money by way of Amends, and such Proceedings shall be had and taken thereupon, and in relation to the Monies so paid into Court, as are prescribed by the Seventieth, Seventy-first, Seventy-second, and Seventy-third Sections of an Act of the Fifteenth and Sixteenth Years of the Reign of her Majesty Queen *Victoria*, Chapter Seventy-six.

§ CCCXVII. Every such Action against any Officer of Customs or other such Person as aforesaid shall be commenced within Two Months after the Cause of Action shall have arisen; and if such Action be brought in respect of any Seizure made by such Officer or other Person, such Cause of Action shall not be deemed to have arisen until the Day after the Trial of the Information with respect to such Seizure, and the Venue in such Action shall be laid in the County or Place where the Cause thereof is alleged to have occurred; and the Defendant may plead the general Issue, and give the special Matter in Evidence on the Trial thereof; and if the Plaintiff shall be nonsuited or discontinue, or if upon a Verdict or Demurrer Judgment shall be given against him, the Defendant shall be entitled to Costs, and have such Remedy for recovering the same as any other Defendant now has in other Cases where Costs are legally recoverable.

§ CCCXVIII.—CCCXXI.—Relate to Procedure in Sheriff and County Courts.

§ CCCXXII. If in any Action commenced after the passing of this Act in any of the Superior Courts of Record in *England*, *Ireland*, or *Scotland*, in which the Plaintiff shall seek to recover Damages for any alleged illegal Seizure or Detention of any Ship or Goods, the said Plaintiff shall recover a Sum not exceeding Twenty Pounds, such Plaintiff shall have Judgment to recover such Sum only, and no Costs, unless at the Trial of such Cause the Judge shall certify on the Back of the Record either that the Case was one that could not be tried, if in *England*, in the County Court, if in *Ireland* in the Civil Bill Court, or if in *Scotland* in the Sheriff's Court, or that although within the Jurisdiction of those Courts respectively it nevertheless was a fit Case to be tried in one of such Superior Courts, or (in case there shall be no Trial) unless the Court or Judge shall make an Order to that Effect, and it shall not be necessary to enter any Suggestion on the Record to deprive such Plaintiff of Costs.

§ CCCXXIII.—Solicitors, Clerks, and Officers of Customs, may conduct Cases.



## 17° &amp; 18° VICTORIÆ REGINÆ.

## CAP. CXXII.

*An Act for the further Alteration and Amendment of the Laws and Duties of Customs.*—[12th August 1854.]

[Am. 16 & 17 V., c. 107. See 18 & 19 V., c. 96.]

§ XIV. The Option given to a Defendant by Section Two hundred and Sixty-four of "The Customs Consolidation Act, 1853," of removing any Proceedings against himself before any Justice to a Superior Court, shall not be exercised after the Commencement of the Trial thereof by such Justice.

Defendant's Option of removing a Case from the Magisterial to the Superior Court to be exercised before the hearing commences.

## 18° &amp; 19° VICTORIÆ REGINÆ.

## CAP XC

*An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in Matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer.*—[14th August 1855.]

[This Act does not apply to Proceedings in Revenue Matters before Justices of the Peace—see *Reg. v. Beadle*, 7 E. & B. 492; 26 L. J. M. C. 111, 29 Law Times, 76—except when there is a Case stated. See *Moore v. Smith*, 32 L. Times, 314.]

**WHEREAS** in divers Proceedings instituted by or on behalf of the Crown against the Queen's Subjects in respect of Matters relating to the Revenue no Costs are recovered by the Crown, except in certain Cases, and no Costs are paid by the Crown to the Subject: And whereas it is expedient to assimilate the Law as to the Recovery of Costs in such Proceedings by or on behalf of the Crown to that in force as to Proceedings between Subject and Subject: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. In all Informations, Actions, Suits, and other legal Proceedings to be hereafter instituted before any Court or Tribunal whatever in the United Kingdom of *Great Britain and Ireland*, by or on behalf of the Crown, against any Corporation, or Person or Persons, in respect of any Lands, Tenements, or Hereditaments, or of any Goods or Chattels, belonging or accruing to the Crown, the Proceeds whereof, or the Rents or Profits of which said Lands, Tenements, or Hereditaments, by any Act now in force or hereafter to be passed are to be carried to the Consolidated Fund of *Great*

In all Crown Suits, etc., where the Crown is successful, Costs to be recovered as between Subject and Subject.

*Ext. by 19 & 20 V., c. 56, § 24.*

*Costs.*

Defendant entitled to Costs, if successful against the Crown.

*Am. by 19 & 20 V., c. 56, § 22.*

Power to Judges to make Rules and Orders for Regulation of Pleading and Practice in Crown Suits.

*Applies to England and Ireland.*

*Britain and Ireland*, or in respect of any Sum or Sums of Money due and owing to her Majesty by virtue of any Vote of Parliament for the Service of the Crown, or of any Act of Parliament relating to the Public Revenue, her Majesty's Attorney General, or in *Scotland* the Lord Advocate, shall be entitled to recover Costs for and on behalf of her Majesty, where Judgment shall be given for the Crown, in the same Manner, and under the same Rules, Regulations, and Provisions, as are or may be in force touching the Payment or Receipt of Costs in Proceedings between Subject and Subject, and such Costs shall be paid into the Exchequer, and shall become Part of the Consolidated Fund.

II. If in any such Information, Action, Suit, or other Proceeding Judgment shall be given against the Crown, the Defendant or Defendants shall be entitled to recover Costs, in like Manner, and subject to the same Rules and Provisions, as though such Proceeding had been had between Subject and Subject; and it shall be lawful for the Commissioners of her Majesty's Treasury and they are hereby required to pay such Costs out of any Monies which may be hereafter voted by Parliament for that Purpose.

III. And whereas the Procedure and Practice in Informations, Suits, and other Proceedings instituted by or on behalf of the Crown in her Majesty's Court of Exchequer is dilatory, and requires Amendment, and it is desirable that the same should be assimilated as nearly as may be to the Course of Practice and Procedure now in force in Actions and Suits between Subject and Subject: Be it enacted, That it shall be lawful for the Barons of her Majesty's Court of Exchequer in *England*, or any Three of them, and also for the Barons of her Majesty's Court of Exchequer in *Ireland*, or any Three of them, in their respective Courts, to make all such General Rules and Orders for the Regulation of the Pleading and Practice in such Informations, Suits, and other Proceedings, and to frame such Writs and Forms of Proceedings, as to them may seem expedient for the Purpose aforesaid; and all such Rules, Orders, or Regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making of the same, or if Parliament be not sitting, then within Five Days after the next Meeting thereof; and no such Rule, Order, or Regulation shall have Effect until Three Months after the same shall have been so laid before both Houses of Parliament; and any Rule, Order, or Regulation so made shall, from and after such Time aforesaid, be binding and obligatory on the said Court, and on all Courts of Error into which any Judgment of the said Court shall be carried by any Writ of Error, and be of the like Force and Effect, as if the

Provisions contained therein had been expressly enacted by Parliament: Provided always, that it shall be lawful for the Queen's most Excellent Majesty, by any Proclamation inserted in the *London Gazette*, or for either of the Houses of Parliament, by any Resolution passed at any Time within Three Months next after such Rules, Orders, and Regulations shall have been laid before Parliament, to suspend the whole or any Part of such Rules, Orders, or Regulations, and in such Case the whole, or such Part thereof as shall be so suspended, shall not be binding and obligatory on the said Courts, or on any other Court of Common Law or Court of Error.

*Counsel and Agent.*

### 18° & 19° VICTORIÆ REGINÆ.

#### CAP. XCVI.

*An Act to consolidate certain Acts, and otherwise amend the Laws of the Customs, and an Act to regulate the Office of the Receipt of Her Majesty's Exchequer at Westminster.*  
—[14th August 1855.]

[“The Supplemental Customs Consolidation Act, 1855.” Am. 16 & 17 V., c. 107; and 17 & 18 V., c. 122.]

§ XXXVII. Any Writer to the Signet, Solicitor before the Supreme Courts in *Scotland*, or Solicitor-at-Law duly licensed to practise as an Agent in the Courts of Session and Justiciary in *Scotland*, who shall be retained by any Defendant at the Suit of the Crown for any Offence against the Laws relating to the Customs, shall be competent to undertake the Defence of such Defendant, and to instruct Counsel for that Purpose; and any such Defendant who may not have retained any such Agent shall be entitled to be heard by his Counsel on any Trial for such Offence, although such Defendant may have previously appeared to answer such Suit in Person instead of appearing by Agent.

Defendants in Customs Cases to have Choice of Attorney and Counsel in *Scotland*.

See 16 & 17 V., c. 107, § 323.

### 19° & 20° VICTORIÆ REGINÆ.

#### CAP. LVI.

*An Act to constitute the Court of Session the Court of Exchequer in Scotland, and to regulate Procedure in Matters connected with the Exchequer.*—[21st July 1856.]

[Court of Exchequer (*Scotland*) Act, 1856. By this Act the previously existing Forms of Procedure are entirely swept away; but the Powers and Jurisdiction of the Court of Exchequer are left intact.]

**WHEREAS** the Practice and Procedure in the Court of Exchequer in *Scotland* have been found inconvenient and troublesome, and it is expedient that the whole Power, Authority, and Jurisdiction at present belonging to the

*Outer House Procedure.*

[Acts Rep. or superseded:—48 G. 3, c. 145, in part; 1 W. 4, c. 69, in part; 2 W. 4, c. 54; 5 & 6 W. 4, c. 46; 1 V., c. 65; 2 & 3 V., c. 36, § 4, 5.]

The Court of Session to be the Court of Exchequer in Scotland.

Rep. 6 Anne, c. 26, § 2, etc. Am. 2 & 3 V., c. 36, § 4, 5.

One of the Lords Ordinary in the Court of Session to be Lord Ordinary in Exchequer Causes.

Am. 2 & 3 V., c. 36, § 4.

*Infra*, § 3.

Lord Ordinary in Exchequer Causes may act in Vacation as well as during Session; and in his Absence any other Lord Ordinary may act in his Room.

Rep. 2 W. 4, c. 54, § 4; 5 & 6 W. 4, c. 46; and 1 V., c. 65.

Clerks to the Lord Ordinary in Exchequer Causes to be Clerks in such Causes; and

Court of Exchequer should be transferred to and vested in the Court of Session in *Scotland*, and that Provision should be made for the due Administration of Justice by the Court of Session in Exchequer Cases, and for all relative and necessary Proceedings in such Cases: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. The whole Power, Authority, and Jurisdiction at present belonging to the Court of Exchequer in *Scotland*, as at present constituted, shall be transferred to and vested in the Court of Session, and the Court of Session shall be also the Court of Exchequer in *Scotland*.

II. It shall be lawful for her Majesty, her Heirs and Successors, from Time to Time to nominate and appoint One of the Lords Ordinary in the Outer House of the Court of Session to be Lord Ordinary in Exchequer Causes under this Act; and the Lord Ordinary to be so appointed shall, unless where otherwise expressly allowed by this Act, be the sole Lord Ordinary in all Causes to be instituted or carried through before the Court of Session by virtue of this Act, and shall continue to act as Lord Ordinary in all such Causes so long as he shall continue a Lord Ordinary in the Outer House, or until another Lord Ordinary shall be nominated as aforesaid to act as Lord Ordinary in Exchequer Causes in his Room and Stead; and, unless where otherwise expressly provided by this Act, all Proceedings in Exchequer Causes under this Act shall be brought in the first instance before such Lord Ordinary.

III. It shall be competent to the Lord Ordinary in Exchequer Causes at any Time, as well in Vacation or Recess as during the Sittings of the Court of Session, and on any Day or Days of the Year, whether Sederunt Days of the Court of Session or not, to entertain and dispose of all Matters of a summary Nature, or which may appear to the Lord Ordinary to require Despatch, being within his Competency under this Act, and also to try any Cause under this Act, and to pronounce Judgment therein, and in case of the Absence or Inability of the Lord Ordinary, any Duties devolving on him under this Act may, during such Absence or Inability, be performed by any other Lord Ordinary of the Court of Session acting in his Room and Stead.

IV. The Depnte and Assistant Clerks of Session attached to the Lord Ordinary in Exchequer Causes shall be Clerks in all such Causes in the Outer House; and it shall be lawful for the Commissioners of her Majesty's Treasury to

grant to such Assistant Clerk of Session, in respect of the Increase of his Duties under this Act, an Annual Allowance not exceeding Fifty Pounds per Annum, in addition to his ordinary Salary; and such Allowance shall be paid out of any Monies which may from Time to Time be voted by Parliament for that Purpose.

V. It shall be competent to the Lord Advocate, on the Behalf of her Majesty, to commence any such Cause by issuing or causing to be issued against the Defender a Subpœna in the Form, as nearly as may be, of Schedule A. hereunto annexed, which Subpœna may be served upon the Defender and Execution of Service returned in the like Manner as any ordinary Summons before the Court of Session may be served and Execution thereof returned; provided that such Service may be made either by a Messenger-at-Arms, or Sheriff Officer, or by an Excise Officer or other Officer of the Department of Inland Revenue, or any Officer of the Customs.

VI. On the Expiration of the Induciae of any such Subpœna, such Subpœna may be called in the Court of Session, and thereafter enrolled, in the like Manner as any ordinary Summons; and the Lord Ordinary shall, at the Outset of the Cause, unless the Information to which such Subpœna relates be then produced and lodged in Process, pronounce an Interlocutor allowing such Information to be lodged in Process, and no further Proceeding shall take place until such Information be lodged; and upon such Information being lodged a Copy thereof shall be served upon the Defender, unless such Service shall have been previously made; and the Transmission of such Copy through the Post, addressed to his known Residence or Place of Business, shall be deemed sufficient Service; and a Certificate by any One Person, written on the Information itself and signed, bearing that a Copy thereof has been served upon the Defender, shall be *prima facie* Evidence of such Service having been duly made; and after the Information shall have been served as aforesaid, the Lord Ordinary shall, if the Defender shall admit the Truth of the Information, or of such Part thereof as may be insisted in against him, or do not appear, give Decree in Terms of the said Information, so far as the same shall be insisted in; and if the Defender shall appear, and shall not admit as aforesaid, the Lord Ordinary shall appoint a Day for hearing the Parties upon such Information, where this may appear to him to be necessary, or shall appoint a Day for trying the Matters put in Issue by such Information, without any Adjustment of any separate Issue or Issues, or shall take such other Course as to him may seem proper; and where

*Subpœna and Information.*

additional Salary granted.

*Rep.* 6 Anne, c. 26, § 3.

Exchequer Causes may be commenced by Subpœna.

7 & 8 G. 4, c. 58, § 57, etc.

16 & 17 V., c. 107, § 293, etc.

*See* 13 & 14 V., c. 36, § 20, 21.

*As to Service:* 7 & 8 G. 4, c. 53, § 60; 4 V., c. 20, § 31.

Subpœna to be called in Court as a Summons, and Procedure thereon.

*Infra*, § 8.

*Subpoena and Information.*

*Rep.* 6 Anne, c. 26,  
§ 6.  
*Regulations; Infra,*  
p. 83.

17 & 18 V., c. 59,  
as *Am.* by 22 & 23  
V., c. 7.

Form of Information in Causes commenced by Subpoena.

Schedule B.; *Infra*,  
pp. 70-76.  
6 Anne, c. 26, § 9.

Special Case may be lodged where Parties agreed upon the Facts.

*See* 4 V., c. 20,  
§ 38.

Procedure in

a Day shall be so appointed for Trial, a Common or Special Jury (where a Special Jury shall be applied for and granted) shall be summoned and empanelled, as in any ordinary Jury Cause before the Court of Session to be tried by a Lord Ordinary in the Outer House; and the Lord Ordinary in Exchequer Causes shall preside at such Trial, and at all other Trials of Exchequer Causes under this Act, unless in any particular Case, upon a special Request by such Lord Ordinary to that Effect to either of the Two Divisions of the Court of Session, another Lord Ordinary shall be appointed to preside in his Stead; and the Verdict of the Jury may be in One or other of the Forms in the Schedule C. hereunto annexed, or in such other Form as may be applicable to the Case, and shall be subject to the Provisions of the Act of the Seventeenth and Eighteenth of Queen Victoria, Chapter Fifty-nine; and on such Verdict being given, the Lord Ordinary presiding at the Trial shall pronounce Decree in conformity therewith, and as may be just and according to Law.

VII. Every Information to be lodged in Terms of this Act shall be in the Form, as nearly as may be, of the Schedule B. hereunto annexed; and it shall be competent to the Lord Advocate, on the Behalf of her Majesty, to amend his Information at any Time before Verdict; provided that no such Amendment shall be made by the Lord Advocate after a Day has been fixed for Trial, unless upon Payment to the Defender of his Expenses previously incurred: Provided also, that it shall not be necessary to mention in any Information any Act of Parliament other than the Act imposing any Penalty or Duty claimed, or creating any Debt sought to be recovered; and provided further, that, notwithstanding the Terms of any such Information, it shall not be incumbent to prove against the Defender, in order to recover under such Information, any Matters stated therein, except only such Matters as are by Law required to be proved in order to the Forfeiture of the Penalty, or the Recovery of the Duty or Debt, or the Condemnation of the Seizure sought for.

VIII. Where in any such Cause commenced by Subpoena as aforesaid the Parties shall be agreed upon the Facts, and shall dispute only on the Law, it shall be competent for them to lodge in Process a Special Case, signed by themselves or their Counsel, setting forth the Facts on which they are so agreed and upon which the Question of Law arises, and such Special Case shall be equivalent to a Special Verdict finding such Facts, and raising a Question of Law for the Lord Ordinary.

IX. The Procedure in all Cases commenced by Subpoena

as aforesaid shall, in so far as not specially provided for by this Act, be regulated by the Lord Ordinary, subject to any Rules and Regulations to be framed as after-mentioned, in such Way and Manner as to the Lord Ordinary shall seem proper and expedient; and, in so far as not so regulated, shall be conducted as nearly as may be in conformity with the Procedure before the Court of Session in ordinary Actions; provided that Protestation shall not be applicable to any such Cases, nor shall any Record require to be made up by Defences, or revised Condescendence and Defences, or to be closed; provided also, that no such Cases shall fall asleep, or require to be wakened; but when any Exchequer Cause shall have lain over for such Period after the passing of this Act as in the Case of any ordinary Action before the Court of Session would have rendered such ordinary Action a sleeping Process, such Exchequer Cause shall not be moved in by the Lord Ordinary or the Court until the Expiration of Ten Days from the Date of written Notice being given by the Pursuer or Defender to the opposite Party in the Cause that the Cause is to be further proceeded with.

X. It shall be competent to the Lord Advocate, on the Behalf of her Majesty, in place of proceeding by Subpœna and Information as herein-before provided, to commence any such Cause by a Summons in One or other of the Forms in Use in the Court of Session for the Time being; and Proceedings may also be taken by Summons as aforesaid at the Instance of any Person or Persons alleging a Ground of Action against the Crown; and where such Cause shall be commenced by Summons, the whole Proceedings shall be conducted throughout as nearly as may be in the like Way and Manner as in Causes depending before the Court of Session, other than Exchequer Causes; and every such Summons to be raised on the Behalf of her Majesty may contain Warrant to arrest on the Dependence; and all Diligence shall be competent upon every such Summons to be raised on the Behalf of her Majesty, and upon any Warrant to arrest on the Dependence contained therein, and with such and the like Operation and Effect as upon any ordinary Summons, or Warrant to arrest on the Dependence contained therein before the Court of Session, according to the Law and Practice in Use in the said Court for the Time in ordinary Causes.

XI. Where any Seizure shall be made by any Officer entitled to make such Seizure, where judicial Condemnation thereof shall be requisite in the Court of Session, an Appraisement of the Articles comprehended therein shall be made in the Form, as nearly as may be, of the Schedule D. hereunto annexed; and such Appraisement shall be lodged

#### *Summons. Seizure.*

Cases commenced by Subpœna, so far as not expressly provided, how to be regulated.

*See* 13 & 14 V., c. 38.

Proceedings may be commenced by Summons in place of Subpœna; and Procedure under Summons to be the same as in ordinary Court of Session Cases.

1 & 2 V., c. 114.  
*But see* *Infra*, § 28-85.

Procedure in Cases of Seizure.

*See* 6 Anne, c. 26, § 7.

*Warrant to Apprehend.*

7 & 8 G. 4, c. 58,  
§ 62, 63; 16 & 17  
V., c. 107, § 309-  
812; 4 V., c. 20,  
§ 82.

*Regulations*, No. 1;  
*Infra*, p. 83.

in the Office of the Clerk of Court attached to the Lord Ordinary within Thirty Days after such Seizure, and such Appraisement of Seizure shall be included by the said Clerk of Court, and published in the Weekly Calling List of the Court of Session not later than Fourteen Days after being lodged with him as aforesaid; and a Claim for the Articles comprehended in such Seizure, or any of them, in the Form, as nearly as may be, of the Schedule E. hereunto annexed, may be lodged with the said Clerk of Court at any Time within Eight Days from the Date of the Calling of such Appraisement as aforesaid; and it shall be competent to the Lord Advocate, on the Behalf of her Majesty, or to the Party claiming such Seizure, to enrol such Appraisement of Seizure in the Weekly Roll of Court of Session Causes at any Time after the Expiration of the said Eight Days; and at the calling of such Appraisement in the said Weekly Roll, if no Claim to such Seizure shall have been lodged, the Lord Ordinary shall pronounce Decree of Condemnation of such Seizure, and thereupon such Seizure shall belong to and be at the Disposal of the Crown; and if a Claim to such Seizure shall have been lodged as aforesaid, the Lord Ordinary shall pronounce an Order upon the Lord Advocate to lodge an Information of Seizure on the Behalf of her Majesty; and, upon such Information of Seizure being lodged, the Procedure shall thenceforward be conducted, as nearly as may be, in the like Manner as in ordinary Causes commenced by Subpoena and Information, in Terms of this Act.

*Supra*, § 6-9.

Procedure in lieu  
of Writs of Capias,  
etc.

7 & 8 G. 4, c. 58,  
§ 61, 67; 4 & 5 W.  
4, c. 51, § 20; 16 &  
17 V., c. 107, § 266.

XII. Where any Cause may, at the Date of the passing of this Act, be competently commenced before the Court of Exchequer by Writ of Capias, or where, at the Date of the passing of this Act, it is competent to apprehend the Defender or Person complained of, in order that he may find Security to appear and answer, or to pay the Penalties, Duties, or Debt sought to be recovered, it shall be competent to pray or conclude in any Information, Summons, or Proceeding to be raised under this Act for Warrant to apprehend such Defender or Person complained of; and such Warrant shall be granted by the Lord Ordinary on Production to him at any Time, whether during Session or not, of the Information or other Writ containing such Prayer or Conclusion, although the same may not have been served, or called, or enrolled; and in every such Case the Defender, or Person complained of, when apprehended, shall be bound with Two sufficient Sureties, to the Satisfaction of the Prosecutor or of the Lord Ordinary, to appear and answer in the Proceeding brought against him as aforesaid, and to pay the Penalties, Duties, or Debt sought to be recovered,



if he shall be found liable therein, or such Sum or Sums as under such Proceeding he may be found liable to pay ; and failing his finding such Security, the Lord Ordinary shall grant Warrant for detaining him in Prison, and he shall be detained in Prison accordingly, until such Security be found, or until the Issue of such Proceeding, or until he be liberated in due Course of Law.

*Summary Execu-  
tion. Interdict.*

XIII. In all Cases where, according to the Practice of the Court of Exchequer at the Date of the passing of this Act, any Rentcharges or Penalties may be levied by Process of the Pipe, it shall be competent for the Lord Ordinary in Exchequer Causes, and he is hereby required, upon the Production to him of a Certificate by any Person charged with the Recovery or Collection of such Rentcharges or Penalties, setting forth that any such Rentcharge or Penalty is due, and the Amount and other Particulars thereof, and the Party or Parties indebted therein, and that he has been unable to recover the same, to issue *ex parte*, and without the Form of any written Application, a Decree decerning and ordaining such Party or Parties to make Payment of such Rentcharge or Penalty ; provided, that all Penalties which may be incurred in One County or Stewartry may be included in One Decree and Charge : Provided also, that any Charge to be given on such Decree, or any Diligence following thereon, may be brought under Suspension by the Party against whom the same is directed, but no such Suspension shall be competent before a Charge has been given.

*Procedure in lieu  
of Writs of the  
Pipe.*

*See 6 Anne, c. 26,  
§ 3.*

*Infra, § 21.*

XIV. In all Cases in which, if occurring at the Date of the passing of this Act, any Person or Persons would be liable to be stayed by Injunction furth of the Court of Exchequer, whether in respect of such Person or Persons prosecuting or threatening to prosecute before any Court other than the Court of Exchequer in any Matters connected with the Revenue, or with the Proceedings of Officers of the Revenue, or in any other Matters as to which exclusive Jurisdiction is at present possessed by the Court of Exchequer, or otherwise, it shall be competent to apply to the Lord Ordinary in Exchequer Causes to restrain such Person or Persons by Interdict from following out such Prosecution in another Court or otherwise, according to the Circumstances of the Case ; and such Application may be made by a Note of Interdict having a Statement of Facts and Note of Pleas in Law appended thereto, all as nearly as may be in the Form at present in Use in the Court of Session ; and such Note of Interdict shall be lodged in the Office of the Clerk of Court attached to the said Lord Ordinary, and shall be forthwith submitted by such Clerk to the said Lord

*Procedure in lieu  
of Injunction.*

*6 Anne, c. 26, § 9.*

Specific Implement.

Ordinary, who may thereupon at once grant Interdict or at once refuse to grant it, or appoint such Note of Interdict in the first place to be served, and if need be to be answered, or Parties to be heard thereon with or without Answers, and may thereupon give Decree granting or refusing Interdict, or may take such other Course in regard to such Application for Interdict as to him may seem proper; provided, that where Interdict shall be granted as aforesaid with reference to any Cause requiring to be instituted within a limited Time, or which, if not instituted within a limited Time, may be competently objected to as not timeously brought, the Time which may have elapsed between the Date of the Service of such Interdict and the Date of the Institution of such Cause to which such Interdict relates, with Ten Free Days in addition thereto, shall be added to the Period limited as aforesaid, and such Cause shall be deemed and taken to be timeously brought, if instituted at any Time within such extended Period.

Procedure in lieu  
of Mandamus.  
6 Anne, c. 26, § 9.

XV. In all Cases where, at the Date of the passing of this Act, it would be competent to apply to the Court of Exchequer for a Rule upon any Person or Persons to show Cause why a Mandamus should not issue against such Person or Persons, directing him or them to do any Act or to perform any Duty, and for such Court of Exchequer, failing such Cause being shown, to issue a Mandamus against such Person or Persons to the Effect aforesaid, it shall be competent to apply to the Lord Ordinary in Exchequer Causes by summary Petition, setting forth briefly the Facts on which the Application is based, for an Order on such Person or Persons decerning and ordaining him or them to do the Act, or to perform the Duty which he or they is or are refusing or neglecting to do or perform; and in the event of the Failure of such Person or Persons to conform and to implement the Terms of said Order, to pay conjointly and severally, or jointly, or otherwise as to the Lord Ordinary may seem fit, such Sum or Sums of Money as may be reasonably demanded in respect of such Failure, and that either in lieu of or by way of Fine or Penalty over and above Performance; and the Lord Ordinary shall order Service of such Petition on such Person or Persons as he may deem proper, and may, if he sees fit, appoint Answers to be lodged to such Petition, or Parties to be heard thereon, with or without Answers, and may thereupon give Decree granting or refusing the Prayer of such Petition, or may take such other Course with regard thereto as to him may seem proper; provided that it shall be competent to the Lord Ordinary to prescribe what shall be deemed good Service of any Order, Interlocutor, or Decree which may

be pronounced by him upon any Person or Persons who may be affected thereby.

*Note of Appeal.*

XVI. Where in any Case any Officer of the Revenue shall make Affidavit that a Debt or Duty is due to the Crown by a Crown Debtor believed to be or to have died insolvent, and shall state in such Affidavit any reasonable Ground for such Belief, and that there is Danger of Loss to the Crown or Revenue with respect to such Debt or Duty, it shall be competent to the Lord Advocate, on the Behalf of her Majesty, to present a summary Petition to the Lord Ordinary, setting forth that such Debt or Duty is resting owing, and that such Affidavit of Danger has been made, producing such Affidavit along with such Petition, and the Lord Ordinary may thereupon, without further Evidence or Inquiry, issue ex parte a Summary Act and Decree decerning and ordaining such Crown Debtor to make Payment of such Debt or Duty; provided that any Charge given or threatened to be given on such Decree, or any Diligence following thereon, may be brought under Suspension by such Crown Debtor, or his Representatives, or any others in his Right.

Procedure on Affidavit of Danger.

*Infra*, § 21.

XVII. In all Cases where, at the Date of the passing of this Act, a Writ of Habeas or a Writ of Certiorari might have competently issued from the Court of Exchequer to the Effect of removing any Proceedings before, or Warrant granted or issued by any Inferior Court or Magistrate or Public Officer to the said Court of Exchequer, in order to Examination, it shall be competent to the Party against whom such Warrant is directed, or to either of the Parties to such Proceedings, to bring up such Warrant or Proceedings to the Court of Session sitting as the Court of Exchequer, to the like Effect as by such Writ of Habeas or Writ of Certiorari before the passing of this Act, and that by lodging in the Office of the Clerk of Court attached to the Lord Ordinary in Exchequer Causes a Note of Appeal, in the Form or as nearly as may be in the Form of the Schedule F. hereunto annexed; and such Note of Appeal shall be forthwith submitted by such Clerk of Court, in a summary Way to the Lord Ordinary, who may thereupon at once direct such Warrant or Proceedings to be transmitted to the Court of Session, or may at once refuse to give such Direction or to entertain such Appeal; or, if he sees fit, may order such Note of Appeal to be served upon the Inferior Magistrate or Magistrates, or Public Officer or Officers, or upon the opposite Party, or both, and them or either of them to lodge Answers to such Appeal; and may also, if he sees fit, order Parties to be heard upon such Note of Appeal, with or without Answers; and may there-

Procedure in lieu of Writs of Habeas and Certiorari.

7 & 8 G. 4, c. 53, § 79; 4 V., c. 20, § 26, etc.; 16 & 17 V., c. 107, § 290, 291.

Ministerial Functions.

upon pronounce such Orders or Decrees as he may deem proper upon the Matters raised by such Appeal; and in particular may either dismiss such Appeal, and remit back simpliciter the Warrant or Proceedings, or may give Decree quashing or setting aside the Warrant, or quashing or setting aside the Proceedings, in whole or in part, and may give such Directions to such Inferior Court, or Magistrate or Public Officer, with regard to his or their Proceedings, as may be just; provided that every Clerk of an Inferior Court or other Public Officer having in his Hands or under his Control any such Warrant or Proceedings shall, on Receipt of a Copy certified by any Depute or Assistant Clerk of Session of any Interlocutor of the Court of Session or of the Lord Ordinary in Exchequer Causes, directing such Warrant or Proceedings to be transmitted to the Court of Session or to the Lord Ordinary, be bound forthwith to transmit such Warrant or Proceedings, with a proper Inventory thereof certified by him to be correct, to the Office of the Clerk of the Court of Session attached to the Lord Ordinary; and where any such Warrant or Proceedings so transmitted to the Court of Session or to the Lord Ordinary shall be remitted back, it shall be the Duty of the Clerk of the Court of Session to re-transmit the same to the Clerk of such Inferior Court or other Public Officer from whom they were received.

As to Performance of certain Duties of Court of Exchequer heretofore performed under 10 & 11 V., c. 51.

XVIII. The Duties heretofore performed by or incumbent on the Judges of the Court of Exchequer, under and by virtue of an Act passed in the Session of Parliament holden in the Tenth and Eleventh Years of the Reign of her present Majesty, intituled *An Act to amend the Practice in Scotland with regard to Crown Charters and Precepts for Chancery*, shall be performed by the Lord Ordinary in Exchequer Causes.

Duties of Court of Exchequer in Appointment of Tutors Dative to be performed by Inner Houses of Session.

See 12 & 13 V., c. 51, § 25

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XIX. The Duties heretofore performed by or incumbent on the Court of Exchequer with regard to the Nomination, Appointment, or Control of Tutors Dative shall be performed by the Court of Session acting as the Court of Exchequer in *Scotland*, upon Applications for such Nomination or Appointment to be made to either of the Divisions of the said Court by way of summary Petition; and the Procedure under such Petitions may be, as nearly as may be, the same as under other summary Petitions to the said Court, but may be regulated and varied from Time to Time in such Way and Manner as to the said Court may seem proper.

Interlocutors in Exchequer Causes may be reclaimed against, and appealed, as if pronounced in ordinary Court of Session Causes.

XX. All Interlocutors of the Lord Ordinary in Exchequer Causes shall be subject to Review of either Inner House of the Court of Session; and all such Interlocutors, and all Interlocutors of the Inner House in Exchequer

Causes, shall be subject to Appeal to the House of Lords, in the like Manner, and to the same Extent and Effect, and under the same Rules and Regulations as any Interlocutor of a Lord Ordinary or of the Inner House in any ordinary Cause before the Court of Session.

*Review, etc. Crown Instance.*

*As to Review:*

*See 6 G. 4, c. 120, § 18; 13 & 14 V., c. 36, § 11.*

*Am. 6 Anne, c. 26, § 12.*

*Suspension, where competent, to be by Note in the Bill Chamber in common Form;*

XXI. Any Suspension may be competently brought at the Instance or on the Behalf of her Majesty, or of any Subject, of any Decree, Charge, threatened Charge, or Diligence whatever in any Cause or Matter connected with the Exchequer, in the like Manner and to the same Extent and Effect as if such Decree, Charge, threatened Charge, or Diligence were in Causes or Matters connected with any ordinary Court of Session Process or Procedure; and the Application for such Suspension may be made in the Bill Chamber by Note of Suspension in ordinary Form, and the Proceedings under the same shall thereafter be conducted as in any ordinary Court of Session Process of the like Nature; provided that, on any such Note of Suspension being passed and enrolled, the Lord Ordinary in Exchequer Causes shall be the Lord Ordinary in such Process.

*and when Note passed, Case to depend before Lord Ordinary in Exchequer Causes. 1 & 2 V., c. 86, § 4, 5.*

XXII. All Causes which shall be brought on the Behalf of the Crown in Terms of this Act shall be at the Instance of the Lord Advocate on the Behalf of her Majesty; and it shall be competent for any Person alleging any Ground of Action against the Crown, which at the Date of the passing of this Act was cognizable by the Court of Exchequer as at present constituted, to call the Crown, by calling the Lord Advocate as Defender or Respondent on the Behalf of her Majesty; and all Interlocutors or Decrees which shall be pronounced in any such Cause shall be binding upon her Majesty and her Royal Successors as upon the other Parties thereto; and where in any such Cause any Decree shall be obtained against the Lord Advocate on the Behalf of her Majesty, Payment of any Money contained in such Decree shall be made, and such Decree shall be otherwise implemented by the Commissioners of her Majesty's Treasury, or by such Board of Revenue or other Department as in the Opinion of the Lord Advocate ought properly to make such Payment or Implement; and the Person obtaining such Decree shall be entitled to demand from the Lord Advocate a Certificate of his Opinion accordingly, but shall not be entitled to put such Decree in farther Execution against the Lord Advocate.

*The Lord Advocate to sue and be sued on behalf of her Majesty.*

*Ext. by 20 & 21 V., c. 44.*

*See 7 & 8 G. 4, c. 53, § 61.*

XXIII. In all Causes which shall be brought under this Act the Lord Advocate shall, in pleading on the Behalf of the Crown, whether before the Court or a Jury, have the Privilege of being heard last, according to the present Practice of the Court of Exchequer.

*Privilege of Audience preserved to the Crown.*

*Privileges of Crown,  
etc.*

Costs may be given  
for and against the  
Crown.

*Am.* 18 & 19 V.,  
c. 90; and 16 & 17  
V., c. 107, § 263.

Exchequer Causes  
to have Prece-  
dence of all others.  
*Infra*, § 28.

Sittings of the  
Court of Session to  
be held to corre-  
spond with existing  
Exchequer Terms.

*Am.* 6 Anne, c. 26,  
§ 9.

Certified Copies of  
Interlocutors,  
equivalent to Ex-  
tracts, except in  
order to Diligence.

Minute Book dis-  
pensed with as to  
Extracts of Ex-  
chequer Decrees;

XXIV. In all Causes which shall be instituted under this Act before the Court of Session acting as the Court of Exchequer in *Scotland*, and in all Causes presently depending, or which shall come to depend, before any Civil Court in *Scotland* at the Instance or on the Behalf of the Crown, against any Person or Persons, or against the Crown at the Instance of any Person or Persons, the Crown, or the Lord Advocate or other Person or Persons suing on its Behalf, shall be entitled, when Decree shall be given for the Crown, to move for and recover Expenses of Process, in the like Manner as and under the like Rules, Regulations, and Provisions as are or may be in force touching Expenses of Process in Proceedings between Subject and Subject; and, where in any Cause, whether to be brought under this Act, or presently depending, or which may come to depend before any Civil Court in *Scotland*, Decree shall be given against the Crown, the Subject obtaining such Decree shall be entitled to move for and, if awarded, to recover Expenses of Process in the like Manner and subject to the like Rules, Regulations, and Provisions as aforesaid; and it shall also be competent to recover Expenses of Diligence to which the Crown is a Party in the like Manner and to the like Extent as such Expenses may be recovered in Cases between Subject and Subject.

XXV. All Causes which shall be brought in Terms of this Act shall be deemed and treated as Summary Causes, and shall be denominated Exchequer Causes, and as such be placed at the Head of every Roll of Causes in which they appear, both in the Inner and Outer House, and shall at all Times take Precedence of and have Preference over all other Causes whatsoever.

XXVI. That Part of the Winter Sittings of the Court of Session which precedes the *Christmas* Recess, and that Part of such Sittings which follows such Recess, and the Summer Sittings of the Court of Session, shall be held to correspond with the Terms heretofore observed in the Court of Exchequer.

XXVII. It shall not be necessary in any Cause to be instituted under this Act to extract any Interlocutor, Order, Act, or Warrant to be pronounced therein, unless for the Purpose of proceeding with Diligence thereon; and a Copy of any such Interlocutor, Order, Act, or Warrant, certified under the Hand of any Principal Depute or Assistant Clerk of Session to be a true Copy, shall be equivalent to a formal Extract thereof; provided that no Diligence shall proceed except upon a formal Extract.

XXVIII. All Decrees to be pronounced under this Act by either Division of the Court of Session, sitting as the

Court of Exchequer, shall be extracted by the Extractor of the Court of Session without abiding the Expiration of the Days of the Minute Book, which are hereby dispensed with ; and such Extractor shall give to all Extracts in Exchequer Causes Preference and Priority in the Preparation thereof over all other Business in his Office ; and such Extracts, and also the Extracts of all Decrees proceeding upon Bonds, or other Obligations to her Majesty, on which Execution may competently proceed, registered in the Books of Council and Session or in the Books of any Sheriff Court, shall be as nearly as may be in ordinary Form, so far as such Form may be consistent with the Provisions of this Act ; except that in the Case of Extracts of Decrees proceeding upon Bonds and other Obligations to her Majesty, registered as aforesaid, and also in the Case of Extracts of such Decrees as aforesaid decerning for Payment of any Penalty, Duty, or Debt due to her Majesty, the Extractor shall insert in the Extract a Warrant to Sheriffs to charge and execute Diligence, in Terms as nearly as may be of the Schedule G. hereunto annexed, in lieu of the Warrant to charge and for Diligence in Use in ordinary Cases ; and such Extract shall be a sufficient Warrant to any Messenger-at-Arms or Sheriff Officer to execute Charge, Arrestment, and Pounding in Terms thereof.

XXIX. It shall be the Duty of every Sheriff to whose Hands any such Extract shall be intrusted for that Effect by any Public Officer on the Behalf of her Majesty to put the same to Execution with all due Despatch, and to take all such lawful and proper Measures as by such Public Officer may be required, in order to enforce by Means thereof, Payment of the Monies, if any, decerned for, and full Implement of the Decree ; and it shall be lawful to any such Sheriff to recover and take Payment, on the Behalf of her Majesty, of the Contents of any such Decree, and upon Payment or Implement in Terms thereof, in whole or in part, to discharge such Decree, but that only to the Extent to which Payment or Implement shall have been obtained by him as aforesaid ; and every such Sheriff shall, on the Receipt by him of any Money on the Behalf of her Majesty, under such Decree, be bound to account for and pay over the same to the Public Officer from whom he received the Extract as aforesaid, or to some other Public Officer or Department entitled to receive the same on the Behalf of her Majesty.

XXX. It shall be lawful for any Sheriff, by virtue of any such Extract, to cause Arrestment to be used thereon in the Hands of any Person in ordinary Form ; and such Arrestment shall operate to transfer to the Crown, prefer-

*Extract and Execution.*

Such Extracts to have Priority in the Extractor's Office ; and such Extracts, and also Extracts of registered Bonds to her Majesty, to be in ordinary Form ; except that Warrant to charge to be in Form, scheduled.

See 1 & 2 V., c. 114.

Exchequer Decrees to be put in Execution by Sheriffs.

6 Anne, c. 26, § 16.

Sheriff may arrest on Extract Decree ;

*Execution.*

And such Arrestment shall transfer to the Crown the arrested Fund.

ably to all other Creditors of the Crown Debtor, all Right to and Interest in the arrested Fund, competent to the Crown Debtor, to such Extent as may be requisite to satisfy and pay the entire Debt due to the Crown, including Interest and Expenses; and every Person in whose Hands any such Arrestment shall be used on the Behalf of her Majesty shall be entitled, and be in Safety, to pay to such Sheriff on the Behalf of her Majesty all Funds in his Hands at the Date of such Arrestment belonging to the Crown Debtor, to any Extent not exceeding the Amount of the Crown Debt with Interest and Expenses, without abiding the Institution of any Process of Furthcoming, or any Decree therein; and if such Payment be not made, it shall be competent to the Crown to follow up such Arrestment by Furthcoming, and also to pursue and do Diligence against the Party indebted to such Crown Debtor, to the full Extent of the Debt due by such Party, as if the Crown stood specially and lawfully assigned into the Debt so due, and into all Bonds, Bills, and Obligations held by the Crown Debtor therefor, and as if such Party were directly indebted to the Crown in the Debt so due: Provided that the Crown shall be accountable to the Crown Debtor, or those in his Right, for any Surplus to be realized by the Crown beyond the Amount of the Crown Debt, with Interest and Expenses.

Sheriff may charge Crown Debtor on Extract Decree;

XXXI. It shall be lawful for any Sheriff, by virtue of any such Extract, to cause charge the Crown Debtor therein mentioned to pay to him, the said Sheriff, for the Behoof of her Majesty, the Sums of Money therein mentioned, or to perform the Obligations therein specified, within the Days of Charge therein prescribed with reference to such Crown Debtor from and after the Date of Charge, under the Pain of Poinding and Imprisonment; and the Officer executing the same shall return an Execution in Terms of the Schedule H. hereunto annexed, or as near to the Form thereof as Circumstances will permit.

Execution of Charge to be in Form scheduled.

Sheriff may poind on Extract Decree.

XXXII. On the Expiration of the Days of Charge against the Crown Debtor, it shall be lawful for any Sheriff, by virtue of any such Extract as aforesaid, to cause poind the whole moveable Effects, without Exception, of such Crown Debtor, including Bank Notes, Money, Bonds, Bills, Crop, Stocking, and Implements of Husbandry of all Kinds, in or towards Payment of the Sums of Money therein mentioned; and such Poinding shall be carried through as nearly as may be in ordinary Form; except that it shall be lawful for the Officer executing such Poinding, where it is deemed expedient, to take Possession of the poinded Effects, and to place them in a Place of Security

Poinding to be in ordinary Form;

Except that poinded Effects may be taken possession of; and, if



instead of leaving them with the Person in whose Possession they were when poided; and, on the Execution of Poiding being reported, the Sheriff shall grant Warrant to the Sheriff Clerk to sell them in common Form; and if no Offerer appear at the Roup, the Effects, or such Part thereof as according to the appraised Value may satisfy the Debt, Interest, and Expenses due to her Majesty, shall be retained by the Sheriff for her Majesty's Behoof at such appraised Value, subject to such Directions as he may receive with regard to the Disposal thereof from the Public Officer from whom he received the Extract as aforesaid, or from any Public Officer or Department acting in the Matter on the Behalf of the Crown.

*Execution.*

no Offerer at Sale, Sheriff to retain them on Behalf of the Crown.

XXXIII. It shall be competent to any Sheriff, at any Time within Year and Day after any such Charge has expired, to cause any such Extract, and the Execution of Charge thereon, to be presented to the Sheriff Clerk of the County in which such Charge was given; and such Sheriff Clerk shall thereupon record the Execution in the Register of Hornings kept by him, and state therein the Name and Designation of the Person by whom such Extract and Execution were presented, and the Date of the Presentation, which Registration shall have all the like Operation and Effect as the Registration of any expired Charge of Payment, in Terms of the Act passed in the Session of Parliament holden in the First and Second Years of the Reign of her present Majesty, intituled *An Act to amend the Law of Scotland in Matters relating to Personal Diligence, Arrestments, and Poidings*.

On Expiration of Charge, Sheriff may record the Extract and Execution of Charge.

1 & 2 V., c. 114.

XXXIV. On the Execution being so recorded, the Sheriff Clerk shall write upon the Extract, and upon the Execution (if it be written on Paper apart), a Certificate of the Registration thereof, which he shall date and subscribe, in Terms of the Schedule I. hereunto annexed, or as near thereto as Circumstances will permit; and it shall be lawful for the Sheriff to issue a Warrant to imprison in Terms as nearly as may be of the Schedule K. hereunto annexed; and it shall be lawful for any Messenger-at-Arms or Sheriff Officer, by virtue of such Extract and Warrant to imprison, to search for, take, apprehend, and imprison the Debtor or Obligant, and, if necessary for that Purpose, to open shut and lockfast Places; and the Magistrates and Keepers of Prisons are hereby authorized and required to receive into and detain in Prison the Person of the Debtor or Obligant, till liberated in due Course of Law, in like Manner as under any Extract and Warrant to imprison issued under the last-mentioned Act.

After Execution of Charge recorded, Sheriff may issue Warrant to imprison.

*Supra*, § 12.

XXXV. It shall be lawful for any Sheriff, by virtue of Sheriff may seize

*Execution.*

Books of Crown  
Debtor under Ex-  
tract Decree.

any such Extract, to cause the Sheriff Clerk of his County, or other Person empowered by him in that Behalf, to seize and detain the Books of Account and other Books and Papers of the Crown Debtor, in order to ascertain the State of his pecuniary Affairs, and the Book and other Debts due to him, and the Names and Residences of his Debtors, and the Amounts of the Debts severally due by them; and such Extract shall be a sufficient Warrant to such Sheriff Clerk or other Person to seize and detain such Books and Papers in Terms thereof; and such Sheriff Clerk or other Person shall return an Execution of such Seizure in the Form as nearly as may be of the Schedule L. hereunto annexed, and such Books and Papers shall be open to the Inspection of the Sheriff, and of any public Officer having Interest therein on the Behalf of the Crown.

Effects of deceased  
Crown Debtor may  
be attached by  
Arrestment or  
Poinding.

XXXVI. It shall be competent, notwithstanding the Death of any Person indebted to the Crown by Bond or other Obligation on which Diligence may competently proceed, or under any Extract Decree decerning for Payment of any Penalty, Duty, or Debt to her Majesty, to proceed against the Estate and Effects of such Debtor by Arrestment, and also by Poinding; and it shall not be necessary in order thereto to cite or charge the Executor or other Representative of such Debtor, or to take any Proceeding against such Executor or Representative; but it shall be competent to register such Bond or other Obligation after as before the Death of the Debtor, and to obtain an Extract of the Decree proceeding upon such recorded Bond or Obligation, containing Warrant to execute Diligence in the like Terms as during the Lifetime of such Debtor; and on an Affidavit by any Person to the Effect that such Debtor is deceased, it shall be lawful for the Sheriff, without the Form of any previous Charge, to cause Arrest at once upon such Extract, registered Bond or Obligation, or Extract Decree in the Hands of any Person indebted or supposed to be indebted to the Deceased, and also to poind the whole moveable Effects of the Deceased, in the like Manner and to the same Effect in every respect as if the Deceased were still in Life, and had been duly charged and the Charge had expired.

Bonds, etc., hereto-  
fore taken by  
Court of Exche-  
quer may be taken  
by Sheriffs, etc.

*Am.* 6 Anne, c. 26,  
§ 7.

Bonds to her  
Majesty to be held

XXXVII. In all Cases where, at the Date of the passing of this Act, any Bonds, Recognizances, or Securities are in Use to be taken by any Judge or Judges of the Court of Exchequer, such Bonds, Recognizances, and Securities may be taken by any Sheriff, Sheriff Substitute, or Justice of the Peace.

XXXVIII. All Bonds or Obligations granted or that may be granted to her Majesty, in the Form heretofore in

Use in the Court of Exchequer in *Scotland*, shall be deemed and taken to be probative Documents, and shall have all the like Privileges, Operation, and Effect as if duly executed and attested according to the Law of *Scotland*; and all Bonds or Obligations granted or that may be granted to her Majesty, albeit not containing any Clause of Registration, shall be capable of Registration in the Books of Council and Session, or other Judges Books competent, and to have a Decree interponed thereto, and to be extracted with a view to Execution, in the like Manner as if a formal Clause of Registration had been contained therein; and all Diligence and Execution shall be competent thereon in the like Manner and to all Effects as upon any Bond containing such formal Clause of Registration: Provided, that where any such Bond or Obligation shall be for a penal Sum, stipulated to be paid in the event of Payment not being duly made of a smaller Sum of Money conditioned in such Bond or Obligation, Diligence and Execution shall proceed on the Extract of such Bond or Obligation only for Payment of such smaller Sum, conditioned as aforesaid, with such Interest and Expenses as may be due thereon.

XXXIX. In the event of the Sum due under any Bond or Obligation to her Majesty on which Diligence may competently proceed under this or any other Act not being set forth specifically therein, a stated Account of the Sum due under it, having annexed to it a Certificate signed by any Officer of the Revenue, in the Form as nearly as may be of the Schedule M. hereunto annexed, recorded along with such Bond or Obligation, shall be sufficient to ascertain the Sum due under such Bond or Obligation; and the Extractor shall, in extracting the Decree proceeding upon such Bond or Obligation, make the Warrant of Charge and for Diligence to be contained in such Extract applicable to the Sum in the said stated Account, in the like Manner in all respects as if such Sum in the said stated Account had been actually specified in such Bond or Obligation, and thereupon all Diligence and Execution shall proceed as if it had been so specified: Provided always, that no such Bond or Obligation granted after the Date of this Act shall be entitled to the Privilege hereby conferred unless there be inserted therein a specific Clause conferring such Privilege.

XL. Where any Duty shall have accrued due to her Majesty in any Part of the United Kingdom furth of *Scotland*, and the Person owing such Duty shall be subject to the Jurisdiction of the *Scotch* Courts, it shall be competent to proceed in *Scotland* against such Person for the Recovery of such Duty in the like Manner as if such Duty had accrued due in *Scotland*; and all Evidence that such Duty

*Summary Execution on Bonds.*

as containing a Clause of Registration.

Where a Bond to her Majesty is not for a specific Sum, Sum may be supplied by an Account stated and certified, on which Diligence may proceed.

Provision for recovering in *Scotland* Duties accruing in other Parts of the United Kingdom.

See 22 & 23 V., c. 21, § 24.

*Miscellaneous.*

Jurisdiction of  
Sheriffs and Jus-  
tices in Exchequer  
Cases saved.

Preference of  
Crown over other  
Creditors not to be  
affected.

4 V., c. 20, § 24.

See 6 Anne, c. 26,  
§ 7; 57 G. 3, c.  
117.

Section 3 of 16 V.,  
c. 20, not to extend  
to Revenue Cases.

*Defender's Evidence  
not to be admissible.*

Lord President,  
Lord Advocate,  
and Lord Ordinary  
in Exchequer  
Causes empowered  
to make Orders  
and Regulations to  
facilitate Proce-  
dure.

*See Regulations :*  
*Appendix, p. 88.*

Offices of Attornies,  
or sworn Clerk  
and Macers in Ex-  
chequer, etc., abo-  
lished.

Rep. 6 Anne, c. 26,  
§ 3, 5.

is resting owing, which would by any Law or Statute have been receivable in such other Part of the United Kingdom, shall be receivable in *Scotland*, and with such and the like Effect and Operation in every respect as would attach to such Evidence in such other Part of the United Kingdom, or to any similar Evidence in *Scotland*.

XLII. Nothing in this Act contained shall operate to prevent the Exercise by any Sheriff or Justice of the Peace in *Scotland* of any Jurisdiction at present competent to such Sheriff or Justice respectively.

XLII. Nothing in this Act contained shall impair, injure, or affect any Preference of the Crown in competition with other Creditors; and in all Questions of Preference or Competition, the Execution of any Charge at the Instance or on the Behalf or for Behoof of the Crown, and in the Case of deceased Crown Debtors to whom no such Charge has been given in their Lifetime, the Execution of any Arrestment or Poining at the Instance or on the Behalf or for Behoof of the Crown, shall be deemed and taken to be equivalent in all respects to the Tests of a Writ of Extent, according to the existing Law and Practice.

XLIII. The Third Section of the Act of the Sixteenth Year of her present Majesty, Chapter Twenty, shall not be deemed to apply to any Cause to be instituted under this Act relating to the Customs or Inland Revenue.

XLIV. The Lord President of the Court of Session, the Lord Advocate, and the Lord Ordinary in Exchequer Causes, and any Two of them, shall have Power to frame Orders and Regulations, from Time to Time, with a view to carry into Execution the Purposes of this Act, and to remove any Difficulties which may be found to arise in applying to the Extent contemplated by this Act the Forms and Practice of the Court of Session to Exchequer Proceedings; provided that such Orders and Regulations shall not be inconsistent with the Provisions of this Act, and that within Fourteen Days from the Commencement of every future Session of Parliament there shall be transmitted to both Houses of Parliament Copies of all Orders and Regulations framed as aforesaid, under the Powers herein given, not previously transmitted to Parliament.

XLV. The Offices of Attornies or Sworn Clerks, and Macers of the Court of Exchequer as at present constituted, are hereby abolished; and also all other Offices in the said Court, in so far as the same relate to any Duties attached to such Offices connected with the issuing of Writs, Process, and Diligence, and the Duties of Clerk of Court.

XLVI. It shall be lawful for any Person who conceives that he is entitled to Compensation for Loss to be suffered

through the Operation of this Act to make Application to the Commissioners of her Majesty's Treasury for the Time being claiming such Compensation; and it shall be lawful for the said Commissioners to investigate such Claim, and to call for such Evidence in relation thereto as they may think necessary; and upon such Claim being established to their Satisfaction, the said Commissioners are hereby authorized and empowered to award to such Person such Compensation as they shall think him entitled to, either by the Payment of a given Sum or by way of Annuity, as they shall think proper; and such Compensations shall be paid out of any Monies which may from Time to Time be voted by Parliament for that Purpose; provided that a Copy of every such Award or Compensation shall be laid before both Houses of Parliament within Ten Days from the Date thereof, if Parliament shall be then sitting, and if not, then within Ten Days after the Commencement of the Session of Parliament next ensuing, and no such Award shall be final and conclusive until Two Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any Public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such Office while he shall continue to hold the same.

*Miscellaneous.*

Power to Treasury to grant Compensations for Loss of Office.

XLVII. In construing this Act the following Words and Expressions shall receive the Meaning after assigned to them: The Expression "Lord Ordinary" shall mean the Lord Ordinary in Exchequer Causes to be appointed under this Act; the Word "Cause" shall comprehend Action, Suit, Prosecution, Process, and Proceeding; the Word "Person" shall comprehend Tribunal and public and private Company, and corporate and public and other Body, as well as the individual Members of such Tribunal, Company or Body; the Word "Decree" shall comprehend Act, Order, Warrant, Interlocutor, and Judgment; the Expression "Rentcharge" shall comprehend Debt, Rent, and Duty; and the Word "Penalty" shall comprehend Fine and Forfeiture.

Interpretation of certain Terms.

XLVIII. All Laws, Statutes, Usages, Acts of Sederunt, and Rules and Regulations of Court now in force shall be and the same are hereby repealed, in so far as may be necessary to give Effect to the Provisions of this Act, and no further or otherwise.

Repeal of certain Laws, etc.

XLIX. This Act shall take effect from and after the Twelfth Day of November One thousand eight hundred and fifty-six; and all Causes then depending in the Court of Exchequer as at present constituted shall be transferred to the Court of Session acting as the Court of Exchequer

Commencement of Act.

*Transference of  
Depending Causes.*

under this Act, and shall be proceeded with in such Way and Manner as may be prescribed by any Rules and Regulations to be framed in Terms of this Act.

## SCHEDULES REFERRED TO IN THE FOREGOING ACT.

### SCHEDULE A.

#### SUBPCENA.

[*Name and Designation of Party.*]

You are hereby required to appear before the Lord Ordinary in Exchequer Causes in the Court of Session at Edinburgh, on the Fourteenth Day next after the Date of Service of this Subpcena, to answer to an Information then to be presented at the Instance of the Lord Advocate, on the Behalf of her Majesty against you [*and, when the Information is to be laid under an Act of Parliament, add*], under the Act [*name Act of Parliament imposing the Penalty or Duty claimed, or under which the Debt is sought to be recovered*]. Given at Edinburgh, this                      day of                      Eighteen hundred and                      years.

(Signed)                      A. B.

Depute [*or Assistant*] Clerk of Session.

### SCHEDULE B.

#### INFORMATION.

##### 1. *Spirits.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

1st Count,—That on the                      Day of                      in the Year                      , there was found in the Distillery of A. [*design him*], commonly called the                      Distillery, in the County of                      , and not in the Mash Tun or Wort Underback in such Distillery,                      Gallons of Wort or Wash, the Gravity whereof did exceed by more than Three Degrees, that is to say, by Fifteen Degrees in Cooler No. 1, by Fifty-five Degrees in Back No. 2, by Sixteen Degrees in Back No. 3, the particular Gravity which had been specified in a Notice in Writing delivered to the Supervisor or Surveyor in charge of the Distillery of him, the said A. Contrary to the Statute 4th Geo. IV., Cap. 94, Sect. 44. Whereby the said A. has forfeited the Sum of L.200.

2d Count,—That on the                      Day of                      in the Year                      , there was found in the said Distillery of the said A., and not in the Mash Tun or Wort Underback in such Distillery, 100 Gallons of Wort or Wash, the Gravity whereof did exceed by Fifty-four Degrees, or, at least, by more than Three Degrees, the particular Gravity which had been specified in a Notice in Writing in that Behalf, delivered to the Supervisor or Surveyor in charge of the Distillery of him, the said A. Contrary to the Statute 4th Geo. IV., Cap. 94, Sect. 44. Whereby the said A. has forfeited the Sum of L.200.

3d Count,—That on the                      Day of                      in the Year                      , in the Distillery of the said A., commonly called                      Distillery, of the said A., 9,211 Gallons of Wort or Wash, which had not been collected in the Wort Receiver, and the Quantity and Gravity whereof had not been declared, as in the Statute in that Behalf made is required and directed, was conveyed into and collected in a Fermenting Back, No. 1 Back, in the said Distillery, but was not so conveyed and collected within the Space of Six Hours after the Running or Conveyance of such Wort or Wash had commenced. Contrary to the Statute 4th Geo. IV., Cap. 94, Sect. 48. Whereby the said A. has forfeited the Sum of L.200.

4th Count,—That the said A., being a Distiller, on the                      Day of                      in the Year                      , and on Three other Days between that Day and the

**Day of** , in the Distillery of the said A., One hundred Gallons of Wort or Wash, which had not been collected in the Wort Receiver, and the Quantity and Gravity of which had not been declared, as in the Statute in that Behalf made is directed, and which was intended to be run or conveyed into a Fermenting Back of him the said A., as such Distiller, was conveyed into and collected in a Fermenting Back in the said Distillery; yet the said A. did not, on any or either of the said last-mentioned Days, immediately and without Delay, deliver to the proper Officer in that Behalf a Declaration in Writing, specifying the several Particulars in reference to the said Wort or Wash, in Terms of the Statute. Contrary to the Statute 4th Geo. IV., Cap. 94, Sect. 48. Whereby the said A. has, for each of his said Offences, forfeited the Sum of L.200, amounting in the whole to the Sum of L.800.

**5th Count.**—That on the Day of in the Year , at the Place aforesaid, the said A. did remove, or send with a Permit, a lesser Quantity of Spirits than the Quantity specified and described in the said Permit. Contrary to the Statute 2d Will. IV., Cap. 16, Sect. 13. Whereby the said A. has forfeited the Sum of L.500.

**6th Count.**—That on the Day of in the Year , at the Place aforesaid, the said A. did utter a certain false or untrue Request Note to an Officer of Excise, for the Purpose of falsely and fraudulently obtaining a Permit with and for certain Spirits. Contrary to the Statute 2d Will. IV., Cap. 16, Sect. 13. Whereby the said A. has forfeited the Sum of L.500.

**7th Count.**—That on the Day of in the Year , the said A. did knowingly or willingly give a false or untrue Permit with and for certain Spirits. Contrary to the Statute 2d Will. IV., Cap. 16, Sect. 13. Whereby the said A. has forfeited the Sum of L.500.

**8th Count.**—That on the Day of in the Year , a Quantity of Spirits was removed from the Distillery of the said A., he the said A. being a Distiller licensed under the Statutes in that Case made and provided, in the Quantity of Two Gallons and One Half Gallon, or at least a less Quantity than Nine Gallons. Contrary to the Statute 4th Geo. IV., Cap. 94, Sect. 120. Whereby the said A. has forfeited the Sum of L.200.

[To be Signed by the Lord Advocate or Counsel.]

*Note.*—Each Count in this and any other Information may, if thought proper, be made itself a separate Information.

## 2. Malt.

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

**1st Count.**—That on the Day of in the Year , within the Parish of and County of , A., being a Maltster or Maker of Malt, did remove, carry, or send away about Four Bushels of Malt from the Building or Place where the same had been made, before the said Malt had been taken account of and charged with Duty by the proper Officer of Excise, or did fraudulently deposit, conceal, or convey away from the Sight of the Officers of Excise about Four Bushels of Malt or of Corn or Grain making into Malt. Contrary to the Statute 7th and 8th Geo. IV., Cap. 52, Sects. 40 and 41. Whereby the said A. has forfeited the Sum of L.200.

**2d Count.**—That at the Time and Place aforesaid the said A., being a Distiller and Maker of Low Wines or Spirits, making Entry as a Maltster or Maker of Malt for the sole Purpose of being consumed in distilling Low Wines or Spirits from Malt only, did take about Four Bushels of Malt off the Kiln without having given such Notice as in the Statute 7th and 8th Geo. IV., Cap. 52, Sect. 68, is required. Contrary to the said Statute. Whereby the said A. has forfeited the Sum of L.50.

**3d Count.**—That at the Time and Place aforesaid the said A. did resist, oppose, molest, obstruct, or hinder a Person employed in the Revenue of Excise in the due Execution of

a Power or Authority conferred upon him by the said Statute 7th and 8th Geo. IV., Cap. 52, Sect. 9. Contrary to the said Statute. Whereby the said A. has forfeited the Sum of L.300.

*4th Count*.—That at the Time and Place foressaid the said A. did molest, obstruct, or hinder a certain Person employed in the Revenue of Excise in the Seizure of Malt forfeited under or by virtue of the Statute in that Case made and provided. Contrary to the Statute 7th and 8th Geo. IV., Cap. 53, Sect. 39. Whereby the said A. has forfeited the Sum of L.200.

### 3. Licence.

I, the Right Honourable A.B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That on or about the Day of Eighteen hundred and at in the County of , A. [*design him*], being a Maltster [*or Distiller, or as the Case may be*], did make or manufacture Malt [*or Spirits, or as the Case may be*], for the making or manufacturing [*or did exercise or carry on the Trade or Business of a , for the exercising or carrying on*] of which a Licence was by Statute required, without taking out such Licence. Contrary to the Act 6th Geo. IV., Cap. 81, Sect. 26. Whereby the said A. has forfeited the Sum of L.

### 4. Entry.

I, the Right Honourable A.B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That on or about the Day of Eighteen hundred and at in the County of , A. [*design him*], a Person carrying on the Trade or Business of [*specify it*], under or subject to certain Laws of Excise, did make use of a House [*or Building, or Vessel, or Utensil, or as the Case may be*], for the making of [*or for the retailing or storing, or as the Case may be*] Spirits [*or Malt, or as the Case may be*]; of which House [*or as the Case may be*], Entry was by Statute required to be made; without having made Entry thereof by delivering such true and particular Account thereof as by Law is required, to the Officer of Excise in whose Survey such House [*or as the Case may be*] was intended to be used as aforesaid. Contrary to the Statute 4 & 5 Will. IV., Cap. 51, Sect. 6. Whereby the said A. has forfeited the Sum of L.200.

### 5. Concealing Goods.

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That A. [*design him*], on or about the Day of Eighteen hundred and , at in the County of , did remove, deposit, or conceal, or was concerned in removing, depositing, or concealing, certain or other Goods or Commodities, being of the Value of L. , for or in respect whereof a Duty of Excise was and is imposed, with Intent to defraud her Majesty of the said Duty. Contrary to the Statute 7 & 8 Geo. IV., Cap. 53, Sect 32. Whereby the said A. has forfeited the Sum of L. , being Treble the Value of the said Goods and Commodities, which the Commissioners of Excise have elected to take in lieu of the Penalty of L.100.

### 6. Not cancelling Permit.

I, the Right Honourable A. B., her Majesty's Advocate, on behalf of her Majesty, inform the Court,—

*1st Count*.—That at the Time of committing the several Offences after mentioned, A. [*design him*] was a Dealer in [*or Retailer of*] Spirits, and, as such, had provided himself with a Book, as prescribed by the Act 11 & 12 Vict., Cap. 121, for the Purpose of entering therein such Particulars relating to Spirits to be received into his Stock, Custody, or Possession as by the said Act Dealers in [*or Retailers of*] Spirits were and are required to make due Entries of: And that the said A. did, on or about the Day of Eighteen hundred and , at



in the County of \_\_\_\_\_, receive into his Stock, Custody, or Possession, Fifty Gallons, or other large Quantity of Spirits: Yet the said A. did not, at any Time on the said Day on which the said Spirits were so received by him, make, or cause to be made, due Entries in his said Book, of the several Particulars by the said Act required to be entered therein relating to the said Spirits. Contrary to the said Statute 11 & 12 Vict., Cap. 121. Whereby the said A. has incurred the Penalty of L.100.

2d Count,—That the said A., being a Dealer in [or Retailer of] Spirits, did, on or about the \_\_\_\_\_ Day of \_\_\_\_\_, receive Fifty Gallons or other Quantity of Spirits, which were, at the Time when they were so received by him, accompanied by a true and lawful Permit [or Certificate]; and the said A. did then and there receive such Permit [or Certificate] with the said Spirits; yet the said A. did not, immediately on receiving such Permit [or Certificate], cancel the same in the Manner directed by the said Statute, so as to prevent the same from being again used for the Removal of Spirits. Contrary to the said Statute 11 & 12 Vict., Cap. 121. Whereby the said A. has incurred the Penalty of L.50.

#### 7. Private Still.

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That on or about the \_\_\_\_\_ Day of \_\_\_\_\_, Eighteen hundred and \_\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, B. and C., Officers of Excise, did discover and seize a certain private or concealed Still for making Spirits, in a certain House [or Place, or as the Case may be], in which the same had been or was then set up or kept by A. [design him], or other Person to her Majesty's Advocate unknown, not licensed to that Effect: And the said Still was not, within Ten Days after such Seizure, claimed by any Person as the Owner thereof: And the said A. was the Proprietor of the said Still, or the same was found in his Custody. Contrary to the Statute 3 Geo. IV., Cap. 52, Sects. 13 and 14. Whereby the said A. has forfeited the Sum of L.200 for the said Place in which said Still was found, and the further Sum of L.200 for the said Still.

#### 8. Seizure.

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That B., Officer of Excise, on or about the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, did seize and arrest to the Use of her Majesty, as forfeited, 100 Bushels of Malt or thereby, in respect—

1st Count,—That the said Malt was, by a Person to her Majesty's Advocate unknown, fraudulently deposited, concealed, or conveyed away from the Sight of the Officers of Excise. Contrary to the Statute 7 & 8 Geo. IV., c. 52, Sect. 40. Whereby the said Malt became forfeited.

2d Count,—That the said Malt was in the Custody or Possession of a Person to her Majesty's Advocate unknown, the same being Malt which had been removed, carried, or sent away from the Building and Place where the same had been made, before the said Malt had been taken account of and charged with Duty, such Person knowing the same to have been so removed, carried, or sent away. Contrary to the Statute 7 & 8 Geo. IV., Cap. 52, Sect. 41. Whereby the said Malt became forfeited.

3d Count,—That on or about the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, the said Malt, being Goods and Commodities for and in respect whereof a certain Duty of Excise was imposed, was removed or deposited or concealed, with Intent to defraud her Majesty of such Duty, or of a certain portion thereof. Contrary to the Statute 7 & 8 Geo. IV., Cap. 53, Sect. 32. Whereby the said Malt became forfeited.

9. *Customs.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

1st Count,—That on or about the Day of in the Year , A. [design him], Grocer and Spirit Dealer, was knowingly concerned in conveying, removing, depositing, concealing, or dealing with 80 Pounds Weight or thereby of Tobacco, or other Goods, liable to Duties of Customs, with Intent to defraud her Majesty of the Duties thereon. Contrary to the Statute 16 and 17 Vict., Cap. 107, Sects. 232 and 263. Whereby the said A. has forfeited the Sum of L. , being Treble the Value of the said Tobacco or other Goods, for which the Commissioners of Customs have elected to sue.

2d Count,—That on or about the Day of in the Year , at in the County of , the said A. did carry, convey, or conceal, or was aiding, assisting, or concerned in the carrying, conveying, or concealing of 80 Pounds Weight or thereby of Tobacco, then and there liable to Forfeiture under the Act 16 & 17 Vict., Cap. 107, Sects. 209, 234, and 263. Contrary to the said Statute. Whereby the said A. has forfeited the Sum of L. , being Treble the Value of the said Tobacco, for which the Commissioners of Customs have elected to sue.

10. *Legacy Duty.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That on the Day of in the Year ,

A. [design him] was indebted to her Majesty in the Sum of L. , by virtue of the Statute 55 Geo. III., Cap. 184, Schedule, Part 3, inasmuch as B. [design him], deceased, by certain Testamentary Instruments, gave to C. the clear Residue of the Monies to arise from the Sale or other Disposition of certain heritable Estates of the said B. by the said Testamentary Instruments directed to be sold or otherwise disposed of: That on the Day of in the Year , at in the County of , the said B. died, without revoking or altering the said Testamentary Instruments as to the said Residue so given as aforesaid: That the said clear Residue was more than the Value of L.20: That the said A. was a Trustee to whom the said heritable Estate, out of the Monies to arise from the Sale or other Disposition of which the said clear Residue so given was to be paid or satisfied, was devised; and being such Trustee, he retained, for the Benefit of the said C., the Sum of L. , or thereby, a Part of the said clear Residue, on which Part thereof the Duty which was chargeable was the said Sum of L. ; and the said A. did not, before retaining as aforesaid, first pay the said Duty to her Majesty. Contrary to the said Statute. Whereby the said A. is indebted and liable to pay to her Majesty the said Sum of L.

11. *Inventory Duty.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That on the Day of in the Year ,

A. [design him] was indebted to her Majesty in the Sum of L. , by virtue of the Statutes 48 Geo. III., Cap. 149, Sect. 38, and 55 Geo. III., Cap. 184, Schedule, Part 3, for Double the Amount of Stamp Duty which would have been payable by the said A., upon a certain Inventory of the Personal and Moveable Estate and Effects, in Scotland, of the Value of L. , or thereby, of B. [design him], who died after the 1st Day of January 1842, that is to say, on or about the Day of in the Year , which Inventory the said A., although he had intromitted with and entered upon the Possession and Management of the said Estate and Effects more than Six Calendar Months before the said Day of in the Year , and ought before that Day to have exhibited such Inventory in the proper Commissary Court in Scotland, neglected to exhibit the same within the Time prescribed for that Purpose. Contrary to the said Statutes. Whereby the said A. is indebted to her Majesty in the said Sum of L.

12. *Succession Duty. (Heritable Property.)*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That A. [*design him*] became beneficially entitled upon the Death of B., on the                      Day of                      in the Year                      , to certain Heritable or Real Property, situated in the County of                      , in Possession, or to the Receipt of the Income or Profits thereof, for a Period not less than the Residue of his Life: That the annual Value, after Allowance of all necessary Outgoings of the said Property, was L.                      : That the Value of the said Succession, in Terms of the Statute 16 & 17 Vict., Cap. 51, amounted to the Sum of L.                      , and the Duty payable thereon to the Sum of L.                      : That the said Duty was payable by Eight Half-yearly Instalments, and the Periods when the First and Second Half-yearly Instalments of the same were payable are past, and the said Instalments have not been paid to her Majesty: That the said Instalments of Duty were finally ascertained on the                      Day of                      ; and the said A. has wilfully neglected to pay the same within Twenty-one Days from the said Date when such Duty was so ascertained. Contrary to the Statute 16 & 17 Vict., Cap. 51. Whereby the said A. became indebted to her Majesty in the Sum of L.                      , being the Amount of the said First and Second Instalments of Succession Duty; and liable to pay to her Majesty the Sum of L.                      of Penalty, for Neglect as aforesaid of Payment of said Instalments, and a like Sum of L.                      for every Month after the First Month during which such Neglect has continued and shall continue.

13. *Succession Duty. (Personal Property.)*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That A. [*design him*] became beneficially entitled, upon the Death of B., on the                      Day of                      Eighteen hundred and                      , to a certain Sum of Money, amounting to L.                      : That the said B. obliged himself, by the antenuptial Marriage Contract entered into between him and his Wife, to pay, Six Months after his Death, to the Child or Children of the said Marriage, the said Sum; and the said A. is the only Child of the said Marriage: That the said A. became entitled in Possession to the said Succession, or to the Receipt of the Income thereof, upon the                      Day of                      Eighteen hundred and                      , and the Succession Duty thereon was then payable: That the said Duty amounts to the Sum of L.                      , and has not been paid to her Majesty: That the said Duty was finally ascertained on the                      Day of                      Eighteen hundred and                      , and the said A. has wilfully neglected to pay the same within Twenty-one Days from the said Date when such Duty was so ascertained. Contrary to the Statute 16 & 17 Vict., Cap. 51. Whereby the said A. became indebted to her Majesty in the said Sum of L.                      , being the Amount of the said Succession Duty; and liable to pay to her Majesty the Sum of L.                      of Penalty for Neglect of Payment of said Duty, and a like Sum of L.                      of Penalty for every Month after the First Month during which such Neglect has continued and shall continue.

14. *Crown Teinds.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

1st Count,—That on the                      Day of                      in the Year                      A. [*design him*] was indebted to her Majesty in the Sum of L.                      , due and owing by him for the Teinds and Lands of                      , in the County of                      , after Deduction of Stipend payable therefrom, which Teinds belong to her Majesty for the Crops of the Years                      and                      and intervening Crops.

2d Count,—That the said A., on the                      Day of                      in the Year                      , was indebted to her Majesty in the further Sum of L.                      , due and owing by him for Interest upon Money due by him to her Majesty.

15. *Promissory Note.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That on the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, A. [design him] did make, sign, or issue a certain Promissory Note for the Payment of a Sum of Money amounting to Five Pounds, and not exceeding One hundred Pounds, in another Manner than to the Bearer on Demand, liable to the Payment of Stamp Duty charged by the Statute 17th & 18th Vict., Cap. 83, without the same being duly stamped or marked with the proper Stamp or Mark as by Law is directed, that is, a Promissory Note, bearing Date the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, for the Payment \_\_\_\_\_ Months after Date, to the Order of B., of the Sum of L. \_\_\_\_\_, or some other Promissory Note, liable to a Stamp Duty of \_\_\_\_\_, without the same being duly stamped or marked with the Stamp or Mark indicating the Payment of the said Duty, contrary to the Statutes 55 Geo. III., Cap. 184, 17th & 18th Vict., Cap. 83, and other Statutes. Whereby the said A. has forfeited the Sum of L.50.

16. *Receipt Stamp.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court,—

That on or about the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, A. [design him] did write or sign or cause to be written or signed a certain Receipt or Discharge, given for or upon the Payment of a Sum of Money amounting to Two Pounds and upwards, that is to say, L. \_\_\_\_\_, liable to the Payment of Stamp Duty charged by the Act 16th & 17th Vict., Cap. 59, upon a Piece of Paper, without the same being first stamped, or marked with the Stamp or Mark impressed upon the Paper, and without having the adhesive Stamp affixed thereto, as by Law is directed, contrary to the Statutes 35 Geo. III., Cap. 55, and 16th & 17th Vict., Cap. 59, and other Statutes. Whereby the said A. has forfeited the Sum of L.10 [or L.20].

17. *Attorney Certificate Duty.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That at \_\_\_\_\_ in the County of \_\_\_\_\_, between the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year of \_\_\_\_\_ and the Day of \_\_\_\_\_ the Lodging of this Information, A., in the County of \_\_\_\_\_, Writer, did, for and in Expectation of Gain, Fee, or Reward, commence, carry on, or defend a certain Action, Suit, and Proceeding in a certain Court in Scotland as a Solicitor, Attorney, and Procurator, and Agent of the said Court, without having first duly obtained a proper stamped Certificate in the Manner in the Statute directed. Contrary to the Statute 9 Geo. IV., Cap. 49, Sect. 9. Whereby the said A. has forfeited the Sum of L.50.

18. *Post Horse Duty.*

I, the Right Honourable A. B., her Majesty's Advocate, on the Behalf of her Majesty, inform the Court, That on the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year \_\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, A., having a Licence to keep at One Time to be let for Hire One Horse, did keep at One Time to be let for Hire a greater number of Horses, viz., Two Horses, than he was by the foressaid Licence authorized to keep at One Time to be let for Hire. Contrary to the Statute 16th & 17th Vict., Cap. 88, Sect. 15. Whereby the said A. has forfeited the Sum of L.100.

## SCHEDULE C.

## VERDICT.

The Jury find for the Queen; or

The Jury find for the Defender; or

The Jury find for the Queen [or, the Defender] on the First Count; and for the Defender [or the Queen] on the Second Count [or as the Case may be].

[To be written on the Information, and signed by the Clerk of Court.]



## SCHEDULE G.

## WARRANT TO BE SUBJOINED TO EXTRACTS OF EXCHEQUER DECREES IN FAVOUR OF THE CROWN.

And the said Lords command and charge all Sheriffs of Counties, and each of them, conjunctly and severally, to put this Decree in execution in manner under-written, that is to say, in her Majesty's Name, to cause charge the said A. personally, or at his Dwelling Place, if within Scotland, and if furth thereof, by delivering a Copy of Charge at the Office of the Keeper of the Record of Edictal Citations, at Edinburgh, to make Payment of the foresaid Sum or Sums of Money, Principal, Interest, and Expenses [or to implement and perform the foresaid Obligations, or both to pay and perform, *as the Case may require*], all in Terms of and to the Effect contained in the Decree above written, and here referred to and held as repeated *brevitatis Causa*; and that to them the said Sheriffs, or One or other of them, on the Behalf of her Majesty, within Six Days next after he is charged to that Effect, under the Pain of Poinding and Imprisonment; and also to cause arrest the said A.'s readiest Goods, Gear, Debts, and Sums of Money, in Payment and Satisfaction of the said Sum, Interest, and Expenses; and also to cause seize and detain the Books of Accounts, and other Books and Papers of the said A.; and if the said A. shall fail to obey the said Charge to be given to him as aforesaid, then to cause poind the readiest Goods, Gear, or other Effects of the said A., and, if needful for effecting such Poinding, to cause open all shut and lockfast Places, in Form as Effairs; and also, in the same Event, that the said A. shall fail to obey the said Charge, then to cause search for, take, and apprehend the Person of the said A., and being so apprehended, to cause imprison the said A., within a Tolbooth or other warding Place, therein to remain until he fulfil the said Charge, and, if necessary for that Purpose, to open shut and lockfast Places; and to grant Warrant also to the Magistrates and Keepers of Prisons to receive and detain therein the said A.

Extracted [*Specify Place and Date*] by  
[*Extractor's Signature.*]

## SCHEDULE H.

## EXECUTION OF CHARGE AGAINST CROWN DEBTOR.

Upon the \_\_\_\_\_ Day of \_\_\_\_\_, I, \_\_\_\_\_, Messenger-at-Arms [or Sheriff Officer], by virtue of [*state Nature and Date of Extract and Decree whereupon it proceeds*], at the Instance of \_\_\_\_\_ on the Behalf of her Majesty against A. [*specify Name and Designation of Crown Debtor or Obligant*], passed and in her Majesty's Name and Authority lawfully charged the said A. to [*state what the Party has been charged to do; if to pay Money, specify the Sum, Interest, and Expenses; or if to fulfil an Obligation, specify it as in the Extract*], and that to C.D., Sheriff of the County of \_\_\_\_\_, for the Behoof of her Majesty, within Six Days next after the Date of my said Charge, under the Pain of Poinding and Imprisonment. This I did [*state Mode of Execution, whether personally or otherwise*], before and in presence of E., Witness to the Premises.

[*Messenger's or Officer's Signature.*]

[*Witness's Signature.*]

## SCHEDULE I.

## CERTIFICATE OF REGISTRATION OF EXECUTION OF CHARGE IN SHERIFF COURT.

Presented by A.B. [*Name and Designation*], and registered in the particular Register of Hornings for the Shire of \_\_\_\_\_ on the \_\_\_\_\_ Day of \_\_\_\_\_  
[*Keeper or Clerk's Signature.*]

## SCHEDULE K.

## WARRANT TO IMPRISON.

[Place and Date.]

The Charge being expired, and registered as per Execution and Certificate produced, grant Warrant to search for, take, and apprehend the Person of the said A. [*Name of Debtor or Obligant*], and being so apprehended to imprison him within a Tolbooth or other warding Place, therein to remain until he fulfil the said Charge; and, if necessary for that Purpose, to open shut and lockfast Places; and Warrant also to Magistrates and Keepers of Prisons to receive and detain the said A. accordingly.

[To be signed by Sheriff.]

## SCHEDULE L.

## EXECUTION OF SEIZURE OF BOOKS AND PAPERS OF CROWN DEBTOR.

Upon the                      Day of                      , at                      within the County of  
I, J. H., Sheriff Clerk of the said County of                      , by virtue of a Warrant to  
that Effect, contained in [*specify the Extract in which Warrant contained and its Date*],  
have seized the Books and Papers belonging to A. [*name and design him*], specified in  
the following

## Inventory.

[Follows the Inventory.]

the same having, on my Requisition to that Effect, been voluntarily handed over to me  
by the said A. [or by K.] [*Name and Designation*], having the Custody thereof [or as  
the Case may be].

or,

the same having been found by me in a Safe or Press in the House of the said A. at  
to which I obtained Access by breaking open the Doors of the said House,  
and a Safe or Press therein, because I could not otherwise obtain Admittance thereto  
[or as the Case may be].

[Signature.]

Sheriff Clerk.

## SCHEDULE M.

## CERTIFICATE OF OFFICER OF REVENUE TO STATED ACCOUNT.

I [*Name and Designation*], being an Officer of her Majesty's Revenue, hereby certify,  
That there is due to her Majesty, in terms of the foregoing stated Account, under a  
Bond granted by [*Name and Designation*] to her Majesty, dated the                      Day of  
the Sum of                      Dated at                      this                      Day of  
Eighteen hundred and                      .

[Signature of Officer of Revenue.]

## 20° &amp; 21° VICTORIÆ REGINÆ.

*Lord Advocate may sue, etc.*

## CAP. XLIV.

[Crown Suits, 1857.—See 19 & 20 V., c. 56, § 22; Court of Exchequer (Scotland) Act.]

*An Act to regulate the Institution of Suits at the Instance of the Crown and the Public Departments in the Courts of Scotland.*—[17th August 1857.]

Crown Suits, etc., may be brought in Name of the Lord Advocate :

With the Sanction of the Department having the Interest.

Persons prosecuted not entitled to object to the Instance.

7 & 8 G. 4, c. 53, § 71, 72; 16 & 17 V., c. 107, § 308.

Meaning of "Public Department."

WHEREAS Doubts are entertained as to the proper Instance to be employed in the Institution of Actions, Suits, and Proceedings in the Courts of Justice in Scotland on the Behalf of her Majesty and of Public Departments : Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

I. Every Action, Suit, or Proceeding to be instituted in Scotland on the Behalf of or against her Majesty, her Heirs and Successors, or in the Interest of the Crown, or on the Behalf of or against any Public Department, may be lawfully raised in the Name and at the Instance of or directed against her Majesty's Advocate for the Time being as acting under this Act.

II. Provided always, That before instituting or defending any such Action, Suit, or Proceeding, her Majesty's Advocate shall have the Authority of her Majesty or of the Public Department respectively on whose Behalf or against whom such Action, Suit, or Proceeding shall be instituted, to the Institution or Defence thereof.

III. Provided also, That it shall not be competent to any private Party in any Action, Suit, or Proceeding instituted as aforesaid to challenge or impugn the Instance of or the Title to defend such Action, Suit, or Proceeding, or the Right or Title of her Majesty's Advocate to raise and prosecute or to defend the same, upon any Allegation that such Authority (as aforesaid) has not been granted, or that Evidence of such Authority is not produced.

IV. The Expression "Public Department" shall include the Commissioners of her Majesty's Treasury, the War Department, the Post Office, the Board of Inland Revenue, the Board of Customs, the Commissioners of her Majesty's Woods and Forests, the Commissioners of Works and Public Buildings, the Committee of her Majesty's Privy Council appointed for the Consideration of Matters relating to Trade and Foreign Plantations, and all the like Public Departments, Bodies, or Boards, and all and every Officer and Officers, Person and Persons acting on the Behalf or



in the Interest of or entitled at the Date of the passing of this Act to sue on the Behalf or in the Interest of any such Public Department.

*Repeal.*

V. Nothing in this Act contained shall affect the Instance or Defence of any Action, Suit, or Proceeding instituted or that may be instituted in conformity with the Law as existing at the Date of the passing of this Act; and no Action, Suit, or Proceeding raised or to be raised at the Instance of or against her Majesty's Advocate for the Time being shall abate or be affected by any Change in the Person holding the Office of her Majesty's Advocate.

Existing Actions, etc., not to be affected.

VI. All Laws, Statutes, and Usages are hereby repealed, so far as necessary to give Effect to this Statute, but no further or otherwise.

Laws, etc., repealed so as to give Effect to this Act.

## 22° VICTORIÆ REGINÆ.

### CAP. XXXII.

*An Act to amend the Law concerning the Remission of Penalties.*—[19th April 1859.]

[See 6 Anne. c. 26, § 15; 7 & 8 G. 4, c. 53, § 78.]

**W**HEREAS Penalties which under Penal Statutes are made payable to Parties other than the Crown cannot be remitted or pardoned by the Crown where no express Provision has been made by the Statute for that Purpose, and it is expedient that the Law as to the Remission of such Penalties should be amended and made uniform: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; that it is to say,

I. It shall be lawful for her Majesty (or in *Ireland* for the Lord Lieutenant or other Chief Governor or Governors of *Ireland*) to remit in whole or in part any Sum of Money which under any Act now in force or hereafter to be passed may be imposed as a Penalty or Forfeiture on a convicted Offender, although such Money may be in whole or in part payable to some Party other than the Crown, and to extend the Royal Mercy to any Person who may be imprisoned for Nonpayment of any Sum of Money so imposed, although the same may be in whole or in part payable to some Party other than the Crown.

Penalties for Offences may be remitted by the Crown although payable to Parties other than the Crown.

[See 7 & 8 G.4,  
c. 58, § 59.]

22° & 23° VICTORIÆ REGINÆ.

CAP. XXI.

*An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue side of the Court of Exchequer.*—[13th August 1859.]

Provision for the Recovery of a Debt of Record due to her Majesty, where the Party liable resides in another Jurisdiction.

§ XXIV. For the Recovery of any Debt which by Record in her Majesty's Court of Exchequer in *England* has become or shall become due to her Majesty, in any Case where the Person of the Debtor, or the Estate or Effects of such Debtor, may be within the Jurisdiction of the Court of Exchequer in *Scotland* or *Ireland*, a Copy of the Record of such Debt may be exemplified and transmitted under the Great Seal of the said Court of Exchequer in *England*, to such other of her Majesty's said Courts of Exchequer having Jurisdiction in the Place where the Person liable to Payment of such Debt happens to reside, or where his Estate or Effects may be, and the Court to which such exemplified Copy is transmitted shall cause such Copy to be forthwith enrolled in the Rolls of the said Court; and upon the same being so enrolled, the said Court shall cause Execution or other Process to issue for recovering or levying the said Debt so due to her Majesty, according to the Rules and Practice of such Court, in like Manner in all respects as if such Record had been originally entered or filed in such Court, or the said Debt had originally accrued within the Jurisdiction thereof; and the Proceeds of such Debt, when so recovered, shall be accounted for and paid over in the same Manner as if the same had been recovered within the Jurisdiction of the Court in which such Debt originally accrued.

## [APPENDIX.]

## REGULATIONS

RELATIVE TO

## PRODUCTIONS AT TRIALS OF EXCHEQUER CAUSES.

With a view to carry into Execution the Purposes of the Act 19 & 20 Victoria, Cap. 56, it is hereby ordered, in Terms of 44th Section of the said Statute :—

I. That all Goods and Articles seized, connected with the Cause, may be produced, put in Evidence, and made use of at the Trial, notwithstanding they have not been previously lodged with the Depute or Assistant Clerk; provided always, that reasonable Access to such Goods and Articles shall be given to the Parties in the Cause, on Application, for Eight Days before the Trial.

II. That all Writings, Plans, Maps, Models, or other Productions, may be put in Evidence, and made use of at the Trial without being previously lodged with the Depute or Assistant Clerk; provided always, that a written Notice, containing a List thereof, and specifying where, and in whose custody, to the best of the Knowledge and Belief of the Party giving the Notice, such intended Productions are, shall be given to the opposite Party, or his Agent in the Cause, Eight Days before the Trial; and that, on Application, Access shall be given to such Party or Agent to the Productions contained in such List, in so far as in the Custody or Power of the Party giving the Notice; and provided that Productions, of which such Notice has not been previously given, may of Consent be put in Evidence at the Trial, or may on special Grounds be directed to be put in Evidence at the Trial by the presiding Judge.

[By the Exchequer Act, 19 & 20 V., c. 56, § 44, the Lord President, Lord Advocate and Lord Ordinary in Exchequer Causes are empowered to make Orders and Regulations to facilitate Procedure.]

III. That it shall be competent for any Party citing Witnesses or Havers to a Trial, to cause to be annexed to the Citation of such Witnesses or Havers, a List or Specification of Writings, Maps, Plans, Models, or other Productions, which such Witnesses or Havers are called upon to produce at the Trial; and such Witnesses and Havers, when so cited, shall be bound to bring with them to the Trial the Writings and others mentioned in such List or Specification.

(Signed)

DUN. MNEILL.  
J. MONCREIFF.  
JAS. CRAUFURD.

EDINBURGH, *February 26, 1858.*

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[*Note.*—No other Regulations have hitherto been made in virtue of the powers conferred by the Exchequer Act.]

**BOOK II.**

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**THE COURT OF SESSION.**

**(CIVIL JURISDICTION.)**



TABLE I.

*A Table of the Public General Statutes in Force and applicable to Scotland, which contain Special Provisions relative to Actions of Damages or Penalties to be sued for in the Superior Courts (from the commencement of the present Century).*

| Statute.           | Subject Matter.                                                              | Limitation and Notice of Actions; Malice and Probable Cause, Tender of Amends, &c. | Penalties to be sued for in Superior Courts. |
|--------------------|------------------------------------------------------------------------------|------------------------------------------------------------------------------------|----------------------------------------------|
| 42 G. III. c. 119  | Suppression of Games and Lotteries                                           | \$ 8                                                                               | ...                                          |
| 43 G. III. c. 80   | Highland Roads and Bridges (Scot.)                                           | \$ 28                                                                              | \$ 17                                        |
| 43 G. III. c. 99   | Assessed Taxes Management                                                    | \$ 70                                                                              | \$ 62, 63                                    |
| 43 G. III. c. 139  | Forgery of Bills and Notes, etc.                                             | \$ 9                                                                               | ...                                          |
| 43 G. III. c. 141  | Protection of Justices -<br>(Printed in this Collection, Book II.)           | Whole Act                                                                          | ...                                          |
| 43 G. III. c. 150  | Assessed Taxes Management (Scotland)                                         | \$ 59                                                                              | \$ 53, 4, 5                                  |
| 43 G. III. c. 161  | Assessed Taxes (Great Britain) -                                             | \$ 86                                                                              | \$ 80                                        |
| 48 G. III. c. 110  | British White Herring Fisheries -                                            | \$ 58, 59                                                                          | \$ 57                                        |
| 53 G. III. c. 108  | Stamp Duties—Stage Coach do., G. Br.                                         | ...                                                                                | \$ 23, 24                                    |
| 53 G. III. c. 142  | Land Tax -                                                                   | ...                                                                                | \$ 7                                         |
| 55 G. III. c. 71   | Hawkers and Pedlars (Scotland) -                                             | \$ 26, 27                                                                          | \$ 17                                        |
| 59 G. III. c. 69   | Prevention of Enlistment for For. Serv.                                      | ...                                                                                | \$ 10                                        |
| 60 G. III. c. 8    | Blasphemous and Seditious Libels -                                           | \$ 9                                                                               | ...                                          |
| 7 & 8 G. IV. c. 53 | Collection and Management of Excise<br>(Printed in this Collection, Book I.) | \$ 114-119                                                                         | \$ 9-13, 57-8                                |
| 9 G. IV. c. 13     | Duties on Fire Insurance -                                                   | ...                                                                                | \$ 6                                         |
| 9 G. IV. c. 18     | Stamp Duties on Cards and Dice -                                             | ...                                                                                | \$ 37                                        |
| 9 G. IV. c. 29     | Criminal Trials (Scotland) -                                                 | \$ 24                                                                              | ...                                          |
| 9 G. IV. c. 44     | Execution of Laws of Excise -                                                | ...                                                                                | \$ 2                                         |
| 9 G. IV. c. 49     | Stamps and Attornies' Certificates                                           | ...                                                                                | \$ 10                                        |
| 9 G. IV. c. 58     | Ale Houses (Scotland) -                                                      | \$ 33                                                                              | ...                                          |
| 1 & 2 W. IV. c. 43 | Turnpike Roads (Scotland) Act -                                              | \$ 118                                                                             | ...                                          |
| 2 & 3 W. IV. c. 68 | Trespass in Pursuit of Game -                                                | \$ 11, 17                                                                          | ...                                          |
| 3 & 4 W. IV. c. 76 | Election of Magistrates, etc., of Royal Burghs -                             | \$ 34                                                                              | \$ 34                                        |
| 3 & 4 W. IV. c. 77 | Election of Magistrates of Burghs, etc.                                      | \$ 32                                                                              | \$ 32                                        |
| 3 & 4 V. c. 97     | Regulation of Railways -                                                     | ...                                                                                | \$ 2                                         |
| 5 & 6 V. c. 55     | Railway Regulation Amendment -                                               | ...                                                                                | \$ 4                                         |
| 5 & 6 V. c. 97     | Double Costs, Notices of Action, etc.                                        | Whole Act                                                                          | ...                                          |
| 7 & 8 V. c. 85     | Railway Clauses Act -                                                        | ...                                                                                | \$ 17                                        |
| 8 & 9 V. c. 26     | Fresh Water Fishing (Scotland) -                                             | \$ 9                                                                               | ...                                          |
| 8 & 9 V. c. 29     | Regulation of Labour of Children in Print Works Act -                        | \$ 31                                                                              | ...                                          |
| 8 & 9 V. c. 41     | Statute Labour Road Act -                                                    | \$ 8, 46                                                                           | ...                                          |
| 8 & 9 V. c. 83     | Poor Law Amendment Act -                                                     | \$ 82, 86                                                                          | ...                                          |
| 10 & 11 V. c. 14   | Markets and Fairs Clauses Act -                                              | \$ 51                                                                              | ...                                          |
| 10 & 11 V. c. 15   | Gas Works Clauses Act -                                                      | \$ 39                                                                              | ...                                          |
| 10 & 11 V. c. 16   | Commissioners' Clauses Act -                                                 | \$ 103                                                                             | ...                                          |
| 10 & 11 V. c. 17   | Water Works Clauses Act -                                                    | \$ 62, 84                                                                          | ...                                          |
| 10 & 11 V. c. 27   | Harbours, Docks, and Piers Clauses Act                                       | \$ 91                                                                              | ...                                          |
| 14 & 15 V. c. 60   | Ecclesiastical Titles Assumption -                                           | ...                                                                                | \$ 3                                         |
| 16 & 17 V. c. 45   | Savings Banks Annuities -                                                    | ...                                                                                | \$ 34                                        |
| 17 & 18 V. c. 102  | Bribery at Elections -                                                       | \$ 14                                                                              | \$ 9                                         |
| 17 & 18 V. c. 106  | Militia (Scotland) -                                                         | \$ 76, 77                                                                          | \$ 71                                        |
| 18 & 19 V. c. 119  | Passengers Act Amendment                                                     | \$ 92, 3, 4                                                                        | ...                                          |
| 22 & 23 V. c. 66   | Sale of Gas -                                                                | \$ 27, 28                                                                          | ...                                          |

## TABLE

*A Table of the Public General Statutes in Force and applicable to Scotland, which confer Courts, and which prohibit Review of Inferior Court Judgments*

| Statute.              | Subject Matter.                                            |
|-----------------------|------------------------------------------------------------|
| 43 G. III. c. 54      | Parochial Schoolmasters and Schools - - - -                |
| 43 G. III. c. 161     | Assessed Taxes (Great Britain) - - - -                     |
| 53 G. III. c. 123     | Redemption and sale of the Land Tax - - - -                |
| 54 G. III. c. 56      | Copyright in Sculpture, etc. - - - -                       |
| 55 G. III. c. 157     | Irish Commissions for taking Affidavits in Great Britain - |
| 3 G. IV. c. 33        | Recovery of Damages committed by Tumultuous Assemblies -   |
| 3 G. IV. c. 49        | Residence of Sheriffs Depute - - - -                       |
| 4 G. IV. c. 34        | Masters and Servants - - - -                               |
| 5 G. IV. c. 87        | Entailed Estates (Scotland) - - - -                        |
| 5 G. IV. c. 96        | Masters and Workmen - - - -                                |
| 6 G. IV. c. 48        | Justice of Peace Small Debt Act - - - -                    |
| 6 G. IV. c. 91        | Charters of Incorporation to Trading Companies - - - -     |
| 7 G. IV. c. 67        | Banking Copartnerships (Scotland) - - - -                  |
| 9 G. IV. c. 58        | Ale Houses (Scotland) - - - -                              |
| 9 G. IV. c. 69        | Night Poaching Act - - - -                                 |
| 1 & 2 W. IV. c. 43    | Turnpike Roads (Scotland) Act - - - -                      |
| 2 & 3 W. IV. c. 68    | Trespass in Pursuit of Game - - - -                        |
| 2 & 3 W. IV. c. 120   | Stage Carriages and Horses let for Hire (Great Britain)    |
| 3 & 4 W. IV. c. 103   | Labour of Children, etc., in Mills and Factories - - - -   |
| 4 & 5 W. IV. c. 51    | Collection and Management of Excise - - - -                |
| 5 & 6 W. IV. c. 83    | Letters Patent for Inventions - - - -                      |
| 6 & 7 W. IV. c. 42    | Entailed Estates (Scotland) - - - -                        |
| 7 W. IV. & 1 V. c. 73 | Letters Patent to Trading Companies - - - -                |
| 2 & 3 V. c. 42        | General Prisons (Scotland) Act - - - -                     |
| 5 & 6 V. c. 99        | Mines and Collieries—Employment of Women - - - -           |
| 7 & 8 V. c. 15        | Labour in Factories Amendment Act - - - -                  |
| 8 & 9 V. c. 17        | Companies Clauses (Scotland). See Book II. <i>Infra</i> .  |
| 8 & 9 V. c. 19        | Lands Clauses (Scotland). See Book II. <i>Infra</i> .      |
| 8 & 9 V. c. 29        | Labour of Children, etc., in Print Works Regulation Act -  |
| 8 & 9 V. c. 38        | Bank Notes in Scotland—Regulation of Issue - - - -         |
| 8 & 9 V. c. 41        | Statute Labour Act - - - -                                 |
| 8 & 9 V. c. 42        | Canal Companies—Carriers' Act - - - -                      |
| 8 & 9 V. c. 77        | Masters and Workmen (Hosiery) - - - -                      |
| 8 & 9 V. c. 83        | Poor Law Amendment Act - - - -                             |
| 8 & 9 V. c. 128       | Masters and Workmen (Silk Weavers) - - - -                 |
| 9 & 10 V. c. 33       | Corresponding Societies and Lecture Rooms Amendment Act -  |
| 11 & 12 V. c. 36      | Law of Entail (Scotland) - - - -                           |
| 13 & 14 V. c. 33      | Police and Improvement of Towns (Scotland) - - - -         |
| 13 & 14 V. c. 97      | Stamp Duties - - - -                                       |
| 15 & 16 V. c. 57      | Corrupt Practices at Elections - - - -                     |
| 16 & 17 V. c. 26      | Vacancies in Town Councils of Burghs (Scotland) - - - -    |



## II.

*Corporate Privileges, which authorize Summary or Special Procedure in the Superior (from the commencement of the present Century).*

| Enabling certain Parties to sue and be sued. | Review of Inferior Court Judgment prohibited, etc. | Summary or Special Procedure in Superior Courts. | Nature of the Special Procedure enjoined.                 |
|----------------------------------------------|----------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------|
| ...                                          | § 9 and 21                                         | ...                                              |                                                           |
| ...                                          | ...                                                | § 73-75                                          | Case to be laid before a Judge of Exchequer.              |
| ...                                          | ...                                                | § 7                                              | Affidavit before the Court of Session.                    |
| ...                                          | ...                                                | § 3-5                                            | Action of Damages.                                        |
| ...                                          | ...                                                | § 5 and 6                                        | Administration of Oath in Court of Session or Exchequer.  |
| ...                                          | ...                                                | § 10, 13, 15                                     | Summary Complaint in Court of Session.                    |
| ...                                          | ...                                                | Whole Act                                        | Summary Trial in the Court of Session.                    |
| ...                                          | § 5                                                | ...                                              |                                                           |
| ...                                          | ...                                                | § 9                                              | Action in the Court of Session.                           |
| ...                                          | § 28 and 33                                        | ...                                              |                                                           |
| ...                                          | § 14, 15                                           | ...                                              |                                                           |
| § 2                                          | ...                                                | ...                                              |                                                           |
| § 2                                          | ...                                                | ...                                              |                                                           |
| ...                                          | § 26                                               | ...                                              |                                                           |
| ...                                          | § 7                                                | ...                                              |                                                           |
| § 16                                         | § 114, 116                                         | ...                                              |                                                           |
| ...                                          | § 15                                               | ...                                              |                                                           |
| ...                                          | ...                                                | § 162                                            | Action in Court of Exchequer.                             |
| ...                                          | § 42                                               | ...                                              |                                                           |
| § 28                                         | ...                                                | ...                                              |                                                           |
| ...                                          | ...                                                | § 7                                              | Summary Complaint in Court of Session.                    |
| ...                                          | ...                                                | Whole Act                                        | Summary Petition in Court of Session.                     |
| § 3                                          | ...                                                | ...                                              |                                                           |
| ...                                          | § 60                                               | ...                                              |                                                           |
| ...                                          | § 21, 22                                           | ...                                              |                                                           |
| ...                                          | § 69                                               | ...                                              |                                                           |
| ...                                          | § 51                                               | ...                                              |                                                           |
| ...                                          | ...                                                | § 21                                             | Summary Complaint in Court of Exchequer.                  |
| ...                                          | § 43, 44                                           | ...                                              |                                                           |
| § 5                                          | ...                                                | ...                                              |                                                           |
| ...                                          | § 5                                                | ...                                              |                                                           |
| § 57, 58                                     | § 85                                               | § 74, 75                                         | Board to authorize Actions.                               |
| ...                                          | ...                                                | § 87                                             | Petition to Court of Session.                             |
| ...                                          | § 8                                                | ...                                              |                                                           |
| ...                                          | ...                                                | § 1                                              | Prosecution in Name of Lord Advocate.                     |
| ...                                          | ...                                                | § 33-38                                          | Petition in the Court of Session.                         |
| ...                                          | § 369, 370, 385                                    | § 373-383                                        |                                                           |
| ...                                          | ...                                                | § 8                                              | Rule by Court of Exchequer for Examination of Defaulters. |
| ...                                          | ...                                                | § 12                                             | Certificate by Court of Session.                          |
| ...                                          | ...                                                | Whole Act                                        | Petition in the Court of Session.                         |

| Statute.          | Subject Matter.                                              |
|-------------------|--------------------------------------------------------------|
| 16 & 17 V. c. 51  | Succession Duty - - - - -                                    |
| 16 & 17 V. c. 89  | Universities (Scotland) - - - - -                            |
| 16 & 17 V. c. 94  | Entails (Scotland) - - - - -                                 |
| 16 & 17 V. c. 107 | Customs Consolidation Act (1853). See Book I. <i>Supra</i> . |
| 17 & 18 V. c. 25  | Industrial and Provident Societies - - - - -                 |
| 17 & 18 V. c. 31  | Railway and Canal Traffic Regulation - - - - -               |
| 17 & 18 V. c. 91  | Valuation of Lands (Scotland) - - - - -                      |
| 17 & 18 V. c. 104 | Merchant Shipping - - - - -                                  |
| 17 & 18 V. c. 106 | Militia (Scotland) - - - - -                                 |
| 18 & 19 V. c. 63  | Friendly Societies - - - - -                                 |
| 18 & 19 V. c. 88  | Dwelling Houses for the Working Classes (Scotland)           |
| 18 & 19 V. c. 96  | Customs Laws Consolidation and Amendment - - - - -           |
| 18 & 19 V. c. 119 | Passengers Act Amendment - - - - -                           |
| 19 & 20 V. c. 47  | Joint Stock Companies Act - - - - -                          |
| 19 & 20 V. c. 93  | Commissioners of Supply (Scotland) - - - - -                 |
| 19 & 20 V. c. 103 | Nuisances Removal, etc. (Scotland) - - - - -                 |
| 20 & 21 V. c. 49  | Joint Stock Banking Companies - - - - -                      |
| 20 & 21 V. c. 58  | Valuation of Lands Amendment - - - - -                       |
| 20 & 21 V. c. 70  | Boundaries of Burghs and Register of Voters (S.) - - - - -   |
| 20 & 21 V. c. 71  | Lunatics (Scotland) - - - - -                                |
| 20 & 21 V. c. 72  | Police (Scotland) - - - - -                                  |
| 20 & 21 V. c. 73  | Smoke Nuisance (Scotland) Abatement - - - - -                |
| 21 & 22 V. c. 83  | Universities (Scotland) - - - - -                            |
| 21 & 22 V. c. 93  | Legitimacy, etc., Declaration - - - - -                      |
| 21 & 22 V. c. 101 | Friendly Societies Act Amendment - - - - -                   |
| 23 & 24 V. c. 45  | Fisheries (Scotland) - - - - -                               |
| 23 & 24 V. c. 58  | Friendly Societies Act Amendment - - - - -                   |
| 23 & 24 V. c. 79  | Sheriff Court Houses (Scotland) - - - - -                    |
| 23 & 24 V. c. 84  | Adulteration of Food or Drink - - - - -                      |
| 23 & 24 V. c. 92  | Herring Fisheries (Scotland) - - - - -                       |
| 23 & 24 V. c. 105 | Prisons (Scotland) - - - - -                                 |
| 23 & 24 V. c. 140 | Rifle Volunteer Grounds Act, 1860 - - - - -                  |

*Several of the Statutes printed in this Collection contain Provisions*

*Continued.*

| Enabling certain Parties to sue and be sued. | Review of Inferior Court Judgment prohibited. | Summary or Special Procedure in Superior Courts. | Nature of the Special Procedure enjoined.                     |
|----------------------------------------------|-----------------------------------------------|--------------------------------------------------|---------------------------------------------------------------|
| ...                                          | ...                                           | § 50                                             | Petition in the Court of Exchequer.                           |
| ...                                          | ...                                           | § 45                                             | Petition and Complaint in the Court of Session.               |
| ...                                          | ...                                           | Whole Act                                        | Petition in the Court of Session or Bill Chamber.             |
| Whole Act                                    | ...                                           | ...                                              |                                                               |
| ...                                          | ...                                           | § 3-6                                            | Petition in the Court of Session.                             |
| ...                                          | § 8                                           | § 24, 5, 6                                       | Note of Appeal in the Bill Chamber.                           |
| ...                                          | § 542                                         | ...                                              |                                                               |
| ...                                          | § 72                                          | ...                                              |                                                               |
| § 19-22                                      | § 41, 42                                      | ...                                              |                                                               |
| § 3                                          | ...                                           | § 23-32                                          | Petition in the Court of Session.                             |
| ...                                          | ...                                           | § 39                                             | Summons in the Court of Exchequer.                            |
| ...                                          | § 87                                          | ...                                              |                                                               |
| § 13                                         | ...                                           | ...                                              |                                                               |
| ...                                          | ...                                           | § 6                                              | Note of Appeal in the Bill Chamber.                           |
| ...                                          | § 68                                          | ...                                              |                                                               |
| § 5                                          | ...                                           | ...                                              |                                                               |
| ...                                          | ...                                           | § 2                                              | Case for Junior Lord Ordinary and Lord Ordinary in Exchequer. |
| ...                                          | § 2                                           | § 1, 2                                           | Note of Appeal to any Lord Ordinary.                          |
| ...                                          | ...                                           | § 81-4                                           | Petition to the Court of Session.                             |
| § 50, 51                                     | ...                                           | ...                                              |                                                               |
| § 10                                         | § 9                                           | § 7                                              | Note of Appeal in Bill Chamber.                               |
| § 25                                         | ...                                           | ...                                              |                                                               |
| ...                                          | ...                                           | § 9                                              | Declaratory Action.                                           |
| § 4                                          | ...                                           | ...                                              |                                                               |
| § 11                                         | § 6                                           | ...                                              |                                                               |
| ...                                          | ...                                           | ...                                              |                                                               |
| § 32                                         | ...                                           | ...                                              |                                                               |
| ...                                          | ...                                           | § 8                                              | Sheriff to state Case for Court of Session.                   |
| ...                                          | § 18                                          | § 19                                             | Judge to state Case for Court of Justiciary.                  |
| ...                                          | § 46                                          | § 35                                             | Summary Petition by the Lord Advocate.                        |
| § 5                                          | ...                                           | ...                                              |                                                               |

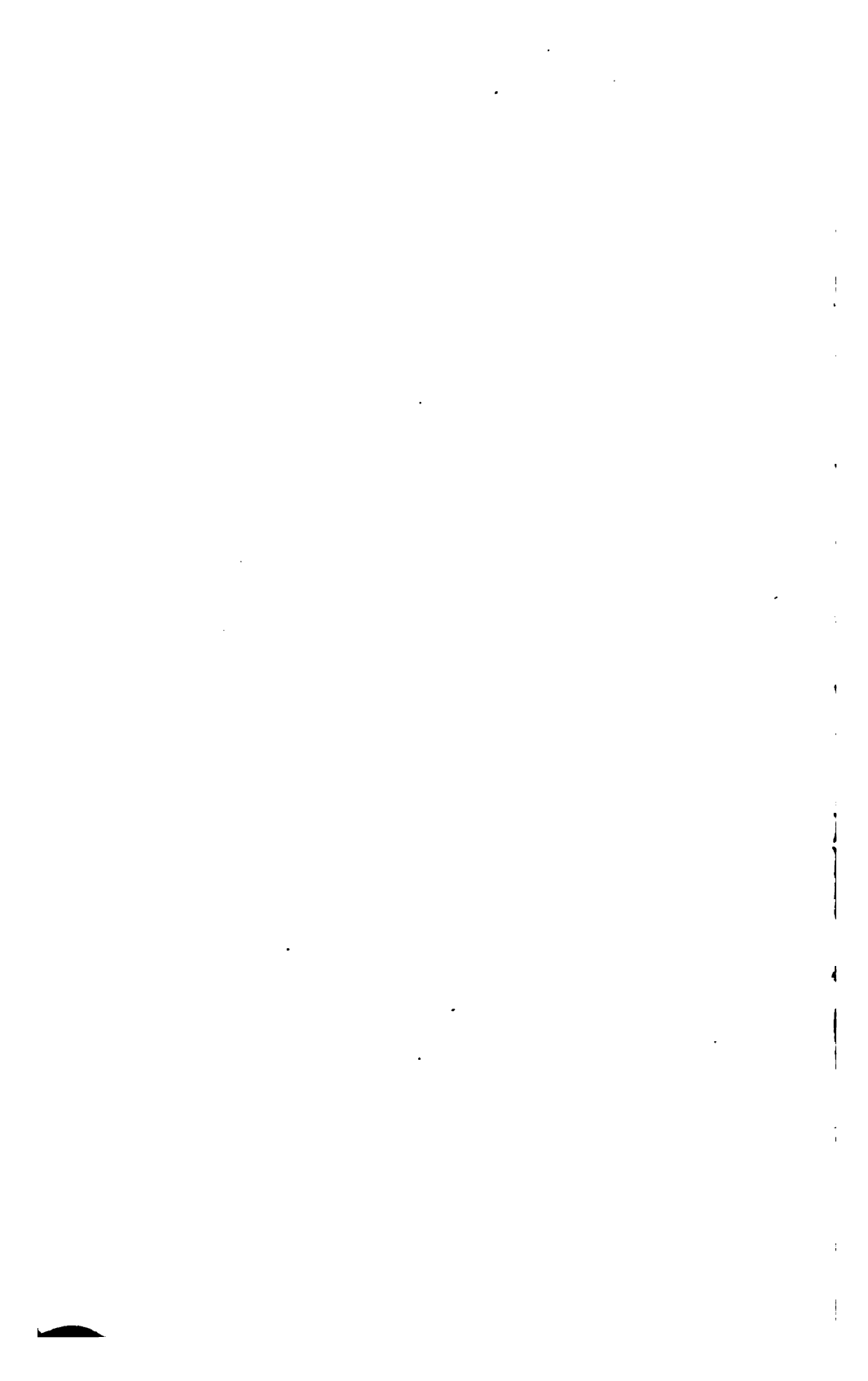
*of a similar nature to the above. See Analytical Digest.*

## TABLE III.

*A Table of Acts of the Parliament of Scotland, relative to Procedure in the Court of Session, referred to in the Notes to Part II.*

- 1537, c. 36-41. The Institution of the College of Justice. St. 1532, c. 2 (Th. Ed.).  
 1540, c. 75. The Ordour of Summounding of all Persones in Civil Actiones.  
 1540, c. 106. The Creditour may persew him quha is charged to enter within Fourtie Daies, and enters nocht.  
 1555, c. 35. Anent the Ordour for giving of Curatoures to Minors.  
 1555, c. 39. Anent the Warning of Tennentes.  
 1555, c. 47. Anent Punishment of False Witnessse.  
 1557, c. 62. Anent the finding of Caution in maters of Improbation.  
 1567, c. 18. The Lords of Session ar Judges to all Infestmentes and Giftes graunted, or confirmed in Parliament.  
 1573, c. 55. Anent them that divertes fra uthers, being joyned of befoir, in lauchful Mariage.  
 1579, c. 93. Anent the Admission of the ordinar Lordes of the Session, and Reformation of certaine Abuses therein.  
 1579, c. 94. The Tenour of Letters of Horning and Indorsationes may not be proven by Witnessse.  
 1581, c. 117. The Form and Paine of Lawborrowes.  
 1581, c. 118. Anent Deforcements, breaking of Arrestmentes, and Alienationes maid in Defraud of Creditoures.  
 1584, c. 3. In Causes of double Poynding, the Pairtie quhais lauchfullie summoned, and compeiris not, sall not be hearde in the Second Instance.  
 1584, c. 9. Authors of Slanderous Speeches, or Writte, suld be punished to the Death.  
 1592, c. 144. Damage and Expenses of Pley suld be modified be the Judges.  
 1600, c. 20. Anent the Marriage of Adulterous Persons.  
 1621, c. 6. Anent Comprisings.  
 1621, c. 7. Anent Adjudications.  
 1621, c. 18. A Ratification of the Act of the Lords of Council and Session, made in Julie 1620, against unlawful Dispositions and Alienations, made by Dyvours and Bankrupts.  
 1621, c. 22. Anent Counterfeiting, and Making of False Writtes.  
 1621, c. 27. Anent Comprysing from Apparent Heyres, extended as well unto Mens owne Debts as their Predecessors.  
 1661, c. 24. Act concerning Appearand Heirs, their Payment of their Predecessors' and their own Debts.  
 1661, c. 31. Act concerning the Registration of Comprisings.  
 1661, c. 51. Act concerning Arrestments.  
 1661, c. 62. Act for ordering the Payment of Debts betwixt Creditor and Debtor.  
 1663, c. 9. Act anent the Discharging of Advocations for Sums within Two hundre l Merks.  
 1663, c. 10. Act in favours of Minors, anent the Duties of the Lands comprised from them.  
 1669, c. 6. Act for the ordering of Suspensions of the Benefices and Stipends of the Clergy.  
 1669, c. 9. Act concerning Prescriptions.  
 1672, c. 2. Act concerning Pupils and Minors, and their Tutors and Curators.  
 1672, c. 16. Act concerning the Regulation of the Judicatories.  
 1672, c. 19. Act concerning Adjudications.  
 1681, c. 5. Act concerning Probative Witnesses in Write and Executions.  
 1681, c. 16. Act concerning the Jurisdiction of the Admiral Court.  
 1681, c. 17. Act concerning the Sale of Bankrupts' Lands.

- 1685, c. 14. Act explaining the Ninth Act of the Parliament 1669, concerning Prescriptions.
- 1685, c. 22. Act concerning Tailzies.
- 1685, c. 38. Act concerning the Registration of Writs in the Books of Session.
- 1685, c. 43. Act in favours of the Inhabitants of Orkney and Zetland.
- 1686, c. 4. Act ordaining all Executions to be subscribed by the Witnesses, without necessity of Stamping.
- 1690, c. 20. Act anent the Sale of Bankrupts Lands.
- 1690, c. 26. Act anent the Confirmation of Testaments.
- 1693, c. 12. Act concerning Citations to the First and Second Dyet.
- 1693, c. 15. Act for summar Registrations and discharging Transferrings active.
- 1693, c. 18. Act anent the signing of Interlocutors immediately after Voting.
- 1695, c. 6. Act regulating the Sale and Payment of Bankrupts' Estate.
- 1695, c. 23. Act anent Lands lying Run-rig.
- 1695, c. 24. Act for obviating the Frauds of Apparent Heirs.
- 1695, c. 27. Act concerning the Church.
- 1695, c. 38. Act concerning the dividing of Commonities.
- 1695, c. 40. Act anent Letters passing the Signet.
- 1696, c. 5. Act for declaring Notour Bankrupts.
- 1696, c. 19. Act for registering Summonds that shall be made use of for Interruptions.
- 1696, c. 21. Act anent Aliments.
- 1701, c. 6. Act for preventing Wrongous Imprisonment, and against undue Delays in Trials.
- 1706, c. 7. Act ratifying and approving the Treaty of Union of the Two Kingdoms of Scotland and England.





# THE PUBLIC GENERAL STATUTES

RELATING TO

## THE COURT OF SESSION

IN

### SCOTLAND.

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 *Abbreviations used in the Marginal Column.—*

*Am.* = amends; *Am. by* = amended by;

*Ext.* = extends; *Ext. by* = extended by;

*Rep.* = repeals; *Rep. by* = repealed by.

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6° *ANNÆ REGINÆ.*

CAP. XXVI.

*An Act for Settling and Establishing a Court of Exchequer  
in the North part of Great Britain called Scotland.*

[Section 6 defines  
the Qualification of  
Common Jurors.]

[This Act is printed in Book I., EXCHEQUER.]

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10° *GEORGI I. REGIS.*

CAP. XIX.

*An Act for explaining the Law concerning the Trial and  
Admission of the Ordinary Lords of Session.*

[See St. 1579, 1  
c. 93.]

§ I. When an ordinary Place shall be vacant in the Court of Session, the King is to nominate a Person qualified. The Qualifications to be examined by the Ordinary Lords only. If they object to the Qualifications, they are to transmit the Matter to the King. If the King

Justiciary Appeal.

signify that the Person shall be received, the Lords shall admit him. But if the King see cause not to admit him, he is to nominate another. II. When the Four present Extraordinary Lords of Session shall become vacant, no Presentation shall be made by the King to supply such Vacancy.

## 20° GEORGII II. REGIS.

## CAP. XLIII.

*An Act for taking away and abolishing the heritable Jurisdictions in that part of Great Britain called Scotland; and for making Satisfaction to the Proprietors thereof; and for restoring such Jurisdictions to the Crown; and for making more effectual Provision for the Administration of Justice throughout that part of the United Kingdom, by the King's Courts and Judges there; and for obliging all Persons acting as Procurators, Writers, or Agents in the Law in Scotland, to take the Oaths; and for rendering the Union of the Two Kingdoms more complete.*

Persons aggrieved by Sentence, etc., of the Sheriff's Court, in criminal Cases not inferring Loss of Life or Demembration, or in civil where the Sum did not exceed L.12, may appeal to the next Circuit Court.

*Am. by 1 V., c. 41, § 80, 81; 16 & 17 V., c. 80, § 22-26.*

Copy to be delivered to the Respondents.

§ XXXIV. And to the end that the Jurisdiction of the Circuit Courts in that Part of Great Britain called Scotland may be rendered more useful and beneficial to his Majesty's Subjects in that Part of the United Kingdom: Be it further enacted by the Authority aforesaid, that it shall and may be lawful to and for any Party or Parties considering himself or themselves aggrieved by any Interlocutor, Decree, Sentence, or Judgment of the Sheriff's or Stewart's Court of any County, Shire, or Stewartry, or of the Courts of any Royal Borough, or Burgh of Regality or Barony, or of any Court of any Baron or other Heritor having such Jurisdiction as is not hereby abrogated or taken away, where such Interlocutor, Decree, Sentence, or Judgment shall be concerning Matters criminal, of whatever Nature or Extent the same may be, except all Cases which infer the Loss of Life or Demembration, or in Matters civil where the Subject Matter of the Suit did not exceed in Value the Sum of Twelve Pounds Sterling, to complain and seek Relief against the same by Appeal to the next Circuit Court of the Circuit wherein such County, Shire or Stewartry, Royal Borough, or Burgh of Regality or Barony, or such Barony or Estate shall lie, so as no such Appeal be competent before a final Decree, Sentence, or Judgment pronounced, and such Appeal it shall be lawful for the Party conceiving himself aggrieved to take and enter in open Court at the Time of pronouncing such Decree, Judgment, or Sentence, or at any Time thereafter within Ten Days, by lodging the same in the Hands of the Clerk of Court, and serving the adverse Party with a Duplicate thereof, personally, or at his Dwelling-House, or his Procurator or Agent in the Cause, and serving in like Manner the inferior Judge himself, in case the Appeal shall contain any Conclusion against him by way of Censure or Reparation of

XXXIV. Maxwell, 1820, 20 F.C. App. 1.—Fulton, 29 Sept. 1826, 8. (Just.) 172.—Macmillan, 21 Jan. 1832, 10 S. 220.—Snell, 22 May 1834, 12 S. 628.—Stott, 26 June 1834, 12 S. 828.—M'Phail, 20 Nov. 1837, 1 Swin. 583.—Gt. North of Scotland Ry. Co., 8 Oct. 1860 (on Circuit).



Damages for alleged wilful Injustice, Oppression, or other Malversation, and such Service shall be sufficient Summons to oblige the Respondents to attend and answer at the next Circuit Court which shall happen to be held Fifteen Days at least after such Service; and thereupon the Judge or Judges at such Circuit Court shall and may proceed to cognosce, hear, and determine any such Appeal or Complaint by the like Rules of Law and Justice as the Court of Session or Court of Justiciary respectively may now cognosce and determine in Suspensions of the Interlocutors, Decrees, Sentences, or Judgments of such inferior Courts, but the said Circuit Court shall proceed therein in a summary way; and in case they shall find the Reasons of any such Appeal not to be relevant or not instructed, or shall determine against the Party so complaining or appealing, the said Judge or Judges shall condemn the Appellant or Complainer in such Costs as the Court shall think proper to be paid to the other Party, not exceeding the real Costs *bona fide* expended by such Party; and the Decree, Sentence, or Judgment of such Circuit Court in any of the Cases aforesaid shall be final.

§ XXXV. Provided that so much of this Act as relates to Appeals in Civil Causes to the Circuit Courts as aforesaid, shall be in force for the Space of Ten Years, to be computed from the said Twenty-fifth Day of *March*, and to the End of the then next Session of Parliament, and no longer.

§ XXXVI. Provided always, that wherever such Appeal shall be brought, such Complainer, at the same Time he enters his Appeal as aforesaid, shall lodge in the Hands of the Clerk of Court from which the Appeal is taken, a Bond with a sufficient Cautioner for answering and abiding by the Judgment of the Circuit Court, and for paying the Costs, if any shall be by that Court awarded; and the Clerk of Court shall be answerable for the Sufficiency of such Cautioner.

§ XXXVII. Provided always, and it is hereby enacted by the Authority aforesaid, that in case such Circuit Court shall, in cognoscing or proceeding upon such Appeal, find any such Difficulty to arise that by Means thereof such Circuit Court cannot proceed to the Determination of the same consistently with Justice and the Nature of the Case; in any such Case, and not otherwise, it shall and may be lawful to and for such Circuit Court to certify such Appeal, together with the Reasons of such Difficulty, and the Proceedings thereupon had before such Circuit Court, to the Court of Session or Court of Justiciary respectively; which Courts are hereby respectively authorized and required to proceed in and determine the same.

§ XXXVIII. And be it further enacted by the Authority aforesaid, That the Act of Parliament made in Scotland in the Year One thousand six hundred and sixty-three, intituled, *Act anent the Discharging of Advocations for Sums within Two hundred Merks*, shall from and after the said Twenty-fifth Day of *March* be, and the same is hereby extended to the Case of all Advocations, in Causes not exceeding the Value of Twelve Pounds Sterling.

§ XLIV. Agents, etc., to take the Oaths. Agents acting without having taken the Oaths, etc., to forfeit L.20; or be committed.

*Appeal to Courts of  
Justiciary and  
Session.*

Circuit Court to proceed in a summary way in hearing Appeals, and award Costs on Affirmance.

Clause relating to Appeals in Civil Cases in force for Ten Years.

*Provisions relative to Circuit Appeals made perpetual by 31 G. 2, c. 42, § 7.*

Appellant to give Security. Clerk of Court answerable for the Security.

Circuit Courts not able to determine Appeal, to certify the same to the Session.

Extension of Statute 1663, c. 9.

*Letters of Horning  
against Superiors.*

## 20° GEORGII II. REGIS.

## CAP. L.

*An Act for taking away the Tenure of Ward Holding in Scotland, and for converting the same into Blanch and Feu Holdings; and for regulating the Casualty of Non-entry in certain Cases, and for taking away the Casualties of Single and Liferent Escheats incurred there by Horning and Denunciation for Civil Causes; and for giving to Heirs and Successors there a summary Process against Superiors; and for discharging the Attendance of Vassals at Head Courts there, and for ascertaining the Services of Tenants there; and for allowing Heirs of Tailzie there to sell Lands to the Crown for erecting Buildings and making Settlements in the Highlands.*

Heirs to or Purchasers of Lands to apply for Letters of Horning to charge the Superior to grant new Infetment.

*Ext. to Charters of Confirmation by 10 & 11 V., c. 48, § 6.*

§ XII. And whereas the Methods of procuring Entry by Heirs or singular Successors or Purchasers of Lands in Scotland, that are held of Subject Superiors, heretofore practised, are tedious and expensive: Be it therefore enacted by the Authority aforesaid, that from and after the said Twenty-fifth Day of March, it shall and may be lawful and competent for any Person who shall be duly served and retoured Heir to any of his Predecessors in any Lands or Heritages in Scotland, and to any Person who shall purchase or acquire such Lands or Heritages from the former Proprietor or Vassal who was duly vested and seised therein, and who shall obtain from such Vendor or former Proprietor a Disposition or Conveyance containing a Procuratory of Resignation in favour of such Purchaser or Disponee, to apply to the Ordinary on the Bills in the Court of Session for the Time being, praying a Warrant for Letters of Horning to charge the Superior of whom such Lands or Heritages were respectively held to receive or grant new Infetment to such Heir or Purchaser respectively; and upon Production to the Lords of Session of a Special Retour of the Petitioner or Party so applying in any such Lands or Heritages, or upon Production of a Disposition or Conveyance bearing a Procuratory of Resignation in favour of such Petitioner, it shall and may be lawful for the said Lords of Session, and they are hereby authorized and required to grant Warrant for Letters of Horning upon Fifteen Days to charge the Superior or Superiors in the Lands contained in such Special Retour or Procuratory of Resignation, to receive or grant new Infetment to such Heir, Purchaser, or Disponee respectively.

Fees to be paid to the Superiors upon Entry of Heirs, etc.

§ XIII. Provided always, that no Superior shall be obliged to give Obedience to such Charge unless the Changer at the same time shall pay or tender to him such Fees or Casualties as he is by Law entitled to receive upon the Entry of such Heir or Purchaser; and that it shall and may be lawful for every such Superior to show Cause why he ought not to be compelled to give Obedience to such Charge, by offering a Bill of Suspension in the usual Manner to the Court of Session.

§ XIV. Heirs of Tailzie allowed to sell Lands to the Crown.—XV. Purchase-money, how to be applied.—XVI. Possessors of Tailzied Estates empowered to sell the Superiorities.—XVII. Purchase-money, how to be applied.

## 24° GEORGII II. REGIS.

*Notice of Action.  
Amends.*

## CAP. XLIV.

*An Act for the rendering Justices of the Peace more safe in the Execution of their Office; and for indemnifying Constables and Others acting in Obedience to their Warrants.*

[Am. by 43 G. 3,  
c. 141.]

§ I. Be it enacted, etc., That from and after the Twenty-fourth Day of June One thousand seven hundred and fifty-one, no Writ shall be sued out against, nor any Copy of any Process at the Suit of a Subject shall be served on, any Justice of the Peace for anything by him done in the Execution of his Office, until Notice in Writing of such intended Writ or Process shall have been delivered to him, or left at the usual Place of his Abode, by the Attorney or Agent for the Party who intends to sue or cause the same to be sued out or served, at least One Calendar Month before the suing out or serving of the same; in which Notice shall be clearly and explicitly contained the Cause of Action which such Party hath or claimeth to have against such Justice of the Peace; on the Back of which Notice shall be indorsed the Name of such Attorney or Agent, together with the Place of his Abode, who shall be entitled to have the Fee of Twenty Shillings for the preparing and serving such Notice, and no more.

No Writ to be  
sued against any  
Justice for what he  
shall do in the  
Execution of his  
Office, till Notice  
given him.

Am. by 5 & 6 V.,  
c. 97, § 4.

§ II. And be it further enacted, That it shall and may be lawful to and for such Justice of the Peace, at any Time within One Calendar Month after such Notice given as aforesaid, to tender Amends to the Party complaining, or to his or her Agent or Attorney; and in case the same is not accepted, to plead such Tender in Bar to any Action to be brought against him grounded on such Writ or Process, together with the Plea of not guilty, and any other Plea, with the Leave of the Court; and if upon Issue joined thereon the Jury shall find the Amends so tendered to have been sufficient, then they shall give a Verdict for the Defendant; and in such Case, or in case the Plaintiff shall become nonsuit, or shall discontinue his or her Action, or in case Judgment shall be given for such Defendant or Defendants upon Demurrer, such Justice shall be entitled to the like Costs as he would have been entitled to in case he had pleaded the General Issue only; and if upon Issue so joined the Jury shall find that no Amends were tendered, or that the same were not sufficient, and also against the Defendant or Defendants on such other Plea or Pleas, then they shall give a Verdict for the Plaintiff, and such Damages as they shall think proper, which he or she shall recover together with his or her Costs of Suit.

He may tender  
Amends, and plead  
the same in Bar,  
etc.

§ III. And be it further enacted, That no such Plaintiff shall recover any Verdict against such Justice in any Case where the Action shall be grounded on any Act of the Defendant as Justice of the Peace, unless it is proved upon the Trial of such Action that such Notice was given as aforesaid; but in default thereof such Justice shall recover a Verdict and Costs as aforesaid.

Plaintiff not to  
recover without  
Proof of such  
Notice.

See 5 & 6 V., c. 97.

§ IV. And be it further enacted by the Authority aforesaid, That in case such Justice shall neglect to tender any Amends, or shall have tendered insufficient Amends before the Action brought, it shall and may be lawful for him by Leave of the Court where such Action shall depend, at any Time before Issue joined, to pay into Court such Sum of Money as he shall see fit; whereupon such Proceedings, Orders, and Judgments shall be heard, made, and given in by such Court as in other Actions where the Defendant is allowed to pay Money into Court.

Justice may pay  
into Court before  
Issue joined such  
Sum as he shall  
think fit.

*Actions against Constables.*

Evidence not to be given of any Cause but such as is contained in the Notice.

Action not to be brought against any Constable acting in obedience to Justice's Warrant, till Demand made of the Copy of the Warrant, and Refusal thereof, etc.

*Rep. by 5 & 6 V., c. 97, § 2.*

Limitation of Actions.

§ V. And be it further enacted, That no Evidence shall be permitted to be given by the Plaintiff, on the Trial of any such Action as aforesaid, of any Cause of Action except such as is contained in the Notice hereby directed to be given.

§ VI. And be it further enacted, etc., That from and after the said Twenty-fourth Day of June Seventeen hundred and fifty-one no Action shall be brought against any Constable, Head Borough or other Officer, or against any Person or Persons acting by his Order and in his Aid, for anything done in Obedience to any Warrant under the Hand or Seal of any Justice of the Peace, until Demand hath been made or left at the usual Place of his Abode, by the Party or Parties intending to bring such Action, or by his, her, or their Attorney or Agent, in Writing, signed by the Party demanding the same, of the Perusal and Copy of such Warrant, and the same hath been refused or neglected for the Space of Six Days after such Demand; and in case, after such Demand and Compliance therewith, by showing the said Warrant to, and permitting a Copy to be taken thereof by, the Party demanding the same, any Action shall be brought against such Constable, Head Borough or other Officer, or against such Person or Persons acting in his Aid, for any such Cause as aforesaid without making the Justice or Justices who signed or sealed the said Warrant Defendant or Defendants, that, on producing or proving such Warrant at the Trial of such Action, the Jury shall give their Verdict for the Defendant or Defendants, notwithstanding any Defect of Jurisdiction in such Justice or Justices; and if such Action be brought jointly against such Justice or Justices, and also against such Constable, Head Borough or other Officer, or Person or Persons acting in his or their Aid as aforesaid, then, on proof of such Warrant, the Jury shall find for such Constable, Head Borough or other Officer, and for such Person or Persons so acting as aforesaid, notwithstanding such Defect of Jurisdiction as aforesaid; and if the Verdict shall be given against the Justice or Justices, that in such Case the Plaintiff or Plaintiffs shall recover his, her, or their Costs against him or them, to be taxed in such Manner by the proper Officer as to include such Costs as such Plaintiff or Plaintiffs are liable to pay to such Defendant or Defendants for whom such Verdict shall be found as aforesaid.

§ VII. Double Costs.

§ VIII. Provided also, and be it enacted, That no Action shall be brought against any Justice of the Peace for anything done in the Execution of his Office, or against any Constable, Head Borough or other Officer, or Person acting as aforesaid, unless commenced within Six Calendar Months after the Act committed.

## 2° GEORGII III. REGIS.

## CAP. XXVII.

[The following Enactments are expressly or virtually repealed:—  
10 Anne, c. 18; 1 G. 1, St. 2, c. 28; 3 G. 2, c. 82, § 1. This Act is itself repealed by 20 & 21 V., c. 56, § 9.]

*An Act for enabling the Judges of the Court of Session in Scotland to make an Adjournment of the said Court for such Time, betwixt the Twentieth Day of December and the Fifteenth Day of January yearly, as they shall judge most convenient, not exceeding Twenty Days.*

§ I. Judges empowered to make an Adjournment of the Court of Session for any Time not exceeding *Twenty Days*, between *Twentieth December* and *Fifteenth January* yearly.

## 10° GEORGII III. REGIS.

## CAP. LI.

*An Act to encourage the Improvement of Lands, Tenements and Hereditaments, in that Part of Great Britain called Scotland, held under Settlements of strict Entail.*

[Am. St. 1685,  
c. 22.  
Ext. by 16 & 17 V.,  
c. 94, § 12; 6 & 7  
W. 4, c. 42, § 7;  
11 & 12 V., c. 36,  
§ 12-14.]

§ I. Preamble reciting an Act of the Scottish Parliament, 1685.—Proprietors of entailed Estates may grant Tacks for Fourteen Years, and One existing Life; or for Two Lives and Life of Survivor; or for Thirty-One Years.—II. Specification of Terms in which Lands so leased are to be inclosed.—III. Lease for Two Lives or more than Nineteen Years to oblige Tenant to keep Fences in repair, and to leave them so at Expiration.—IV. Not more than Forty Acres to be comprehended in One Field, except where Lands are improper for Culture by the Plough. Building Leases may be granted for Ninety-nine Years.—V. But not for more than Five Acres to One Person; conditionally that One Dwelling House be built, etc., for every Half Acre.—VI. Manor Place not to be leased nor Village built within Three hundred Yards thereof.—VII. Lease not to be granted for less Rent than was payable for the last Lease; nor till Determination thereof, etc.—VIII. Tailzie containing ample Powers. Heir in Possession may exercise the same.—IX. Proprietor laying out Money for Improvement of Estate to be a Creditor to succeeding Heir for Three-fourths thereof.—X. Provided the same do not exceed Four Years free Rent after Deduction of Burdens, etc.—XI. Proprietor intending to lay out Money on Improvements, to give Notice thereof, and lodge a Copy thereof with Sheriff or Steward Clerk.—XII. And laying out Money with Intent to become a Creditor, to lodge annually with the Sheriff or Steward Clerk an Account of Money expended, etc.—XIII. Heir of Entail laying out Four Years free Rent, subsequent Heir not to lay out more.—XIV. Sheriff and Steward Clerks to record Vouchers and make Copies thereof. Fees for the same.—XV. Successive Claims may be made for Money expended, with Interest. On Nonpayment within Three Months, Action may be instituted against Heir in Possession. Persons obtaining Decree to have Preference of other Creditors.—XVI. Heir sued for Money due for Improvements to be discharged on conveying to Creditors One-third of clear Rents, etc.—XVII. Persons in Right of Money due, may sue the Heirs of next Heir, or Heir next succeeding, and in competition shall be preferred to personal Creditors, and likewise succeeding Heirs, with like Preference.—XVIII. Relief competent to successive Heirs to the Extent of One-third Part of the Rents.—XIX. Heirs of Entail, etc., sued on account of Improvements, shall be discharged on Payment of One-third of their Rents.—XX. Claimant of Money expended by Proprietor to require Payment, within Two Years after his Decease, of succeeding Heir, and on Nonpayment for Six Months, to institute Action, etc.—XXI. But neglecting so to do, and not recovering One-third Part of Rents, etc., before his Decease, shall cease to be Creditor to subsequent Heirs for such Sum; and such Third Part to be recoverable only from Executors, etc., of First Heirs, etc., and Surplus from subsequent succeeding Heirs.—XXII. Heir first succeeding, not living long enough to be indemnified for what he pays, his Executors may sue succeeding Heir of Entail for Relief, etc. Like Relief to Executors of every Heir who is not repaid.—XXIII. Money expended in making Improvements

Montgomery Act.

not to be made use of as a Ground of Debt for adjudging Estates.—XXIV. Heir of Entail succeeding to Estate upon which Improvements have been made, excluded from making Claim of Debt.—XXV. On Judgment obtained against Heir for whole Debt created by Improvements, Defender to be liable in full Costs; if otherwise, Court to award Costs at Discretion.—XXVI. Heir of Entail, after having completed Improvements, may bring Action of Declarator, etc., and produce Evidence of Money laid out. Court of Session, etc., may decree what Sum shall be a Charge on succeeding Heirs, etc.—XXVII. Heir of Entail building Mansion House, etc., to be a Creditor to succeeding Heir for Three-fourth Parts of the Expense.—XXVIII. But the same is not to exceed Two Years Rent, after Burdens, etc., deducted.—XXIX. Proprietors laying out Money to give Notice, and record Copies thereof.—XXX. Persons having Right to claim for Money expended by Proprietor in building Mansion House, etc., may, within a Year after Decease, require Heir succeeding to pay the whole with Interest, and on Nonpayment for Three Months, may sue.—XXXI. Rules enacted with respect to Proprietors making Improvements extended to Claims here mentioned.—XXXII. Proprietors of entailed Estates empowered to exchange Lands.—XXXIII. Limitation of Quantity to be exchanged for which an Equivalent is to be made from Lands contiguous. Value of Lands exchanged, how to be adjusted, and Property thereof determined.—XXXIV. This Act to extend to all Tailzies made in Scotland, whether prior or posterior to the Act of 1685.

## 39° GEORGII III. REGIS.

## CAP. LV.

[Thirlage Commutation, 1799. As to § 11, see 20 G. 2, c. 50.]

*An Act for encouraging the Improvement of Lands subject to the Servitude of Thirlage, in that Part of Great Britain called Scotland.*—[13th June 1799.]

§ I. Proprietors of Lands thirled, or of Mills to which Lands are thirled, may apply to have the Thirlage commuted to the Sheriff or Steward Depute, or Substitute, who shall proceed as herein directed. Act not to infringe the Right of taking Materials for supporting Mill Dams, etc.

Sheriff, etc., may determine all Questions in Law contained in Petitions and Answers.

§ II. Whereas the said Petition and Answers may contain Matters of Law touching Rights of Thirlage whereto the said Sheriff or Steward Depute, or Substitute, has not a competent Jurisdiction; Be it therefore enacted, that it shall be lawful to the said Sheriff or Steward Depute, or Substitute, and they are hereby empowered and authorized to decide and determine, by their Order or Decree, on the said Petition and Answers, all Questions in Law therein contained, respecting the Nature, Quality, and Extent of the Thirlage to be valued, and Services, Prestations, and Restrictions thereto incident, or the Claims, Demands, and Deductions made or craved by either of the Parties, any Law, etc.

Sheriff, etc., not to declare Land thirled if the Proprietor deny it, unless the other Party produce Proof of the Right.

§ III. Provided, etc., It shall not be lawful to the said Sheriff or Steward Depute, or Substitute, to pronounce any Judgment or Decree finding or declaring Lands to be thirled, or astricted to a Mill, where the Proprietor of the Lands denies the Existence of any such Right of Thirlage, unless the other Party produce an Extract of a Decree of Declarator pronounced by the Court of Session, or sufficient Evidence

thereof, in Proof of his Right, and that the said Sheriff or Steward Depute, or Substitute, shall (such Production not being made) dismiss the Petition in so far as regards the Lands which are denied to be thirled, and proceed only to the Valuation of the Thirlage of those Lands which are confessed to be thirled, as in Manner is before directed.

§ IV. Be it, etc., After the Expiry of Three Years from the Registration of the Verdict of the Jury, the said Verdict, and the Proceedings had relative thereto, shall not be reduced, set aside, reviewed, altered, or amended by the Court of Session, or any other Judicatory, for any Neglect of the Provisions herein contained, or for any Informality or Error, or for any other Reason or Pretext whatever; and if any Party shall pursue any Process of Reduction of the Verdict of the Jury, or other Process for setting the same aside, or for altering or amending the same, in the Court of Session, and shall fail in such Pursuit or Process, such Party prosecuting as aforesaid shall be liable to the other Party or Parties in full Costs of Suit.

*Advocation and  
Reduction.*

After Three Years' Registration of the Verdict, it shall not be altered, etc. Compare 16 & 17 V., c. 80, § 22.

§ V. After Verdict all Restrictions to cease, and the Proprietor of the Mill shall be bound to receive the Compensation in Corn, or its Value in Money, at the Option of the Payer.—VI. Verdict not to be delayed by Absence of any Persons interested, but the Day for taking it may be adjourned on sufficient Reason being shown.—VII. Annual Payment in lieu of Thirlage to be made at Candlemas.—VIII. The Commutation for Thirlage to Mills let on Lease shall be full Compensation to the Lessees of the Mills; and where paid by Proprietors of Lands thirled and let on Lease, the Lessee of the Lands shall repay the Proprietor.—IX. On Objection of Tenants paying One-fourth of the Rent of Lands thirled, a Jury shall proportion the Commutation.—X. Commutation shall not give Claim to the Mill Proprietor to Relief from the Land Tax, nor affect Right of Freehold.—XI. Thirlage of the *invecta et illata* may be purchased.—XII. Such Thirlage may be purchased notwithstanding the Mill be held under a Deed of Entail on certain Conditions.—XIII. If Mill and Lands be within different Counties, Application to be made to the Sheriff where the Mill is situate.—XIV. Act not to extend where an annual Payment under the Name of Dry Multure is fixed.

20 G. 2, c. 50.

### 43° GEORGII III. REGIS.

#### CAP. CXLI.

*An Act to render Justices of the Peace more safe in the Execution of their Duty.*—[11th August 1803.]

[As to Double Costs, Notice, and Limitation of Actions, see 5 & 6 V., c. 97.]

WHEREAS it is expedient that Justices of the Peace in Great Britain and Ireland respectively, who, by virtue of divers Acts of Parliament in force in the United Kingdom, are authorized and required to convict Persons of sundry Offences in a summary Way, should be rendered more safe in the Execution of such their Duty: Be it therefore enacted by the King's most Excellent Majesty, by and

§ I., II. Anderson, 3 Feb. 1837, 15 S. 481.—Mone, 25 Feb. 1842 (4 D. 786).—Smith, 28 Dec. 1848, 11 D. 287.

*Accerment of Malice.*

In Actions brought against Justices on account of Conviction, etc., the Plaintiff, beside any Penalty that may be levied upon him, shall be entitled only to 2d. Damages, unless alleged in the Declaration the Thing was maliciously done.

*Am.* 24 G. 2, c. 44.

*Ext., and applied to Scotland,* by 9 G. 4, c. 29, § 26; 11 G. 4, & 1 W. 4, c. 87, § 18.

Plaintiff not entitled to recover if proved that the Offence was committed.

*Ext. by* 9 G. 4, c. 29, § 26.

with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Actions whatsoever which shall, at any Time after the passing of this Act, be brought against any Justice or Justices of the Peace in the United Kingdom of *Great Britain and Ireland*, for or on account of any Conviction by him or them had or made, under or by virtue of any Act or Acts of Parliament in force in the said United Kingdom, or for or by Reason of any Act, Matter, or Thing whatsoever done or commanded to be done by such Justice or Justices, for the levying of any Penalty, apprehending any Party, or for or about the carrying of any such Conviction into Effect; in case such Conviction shall have been quashed, the Plaintiff or Plaintiffs in such Action or Actions, besides the Value and Amount of the Penalty or Penalties which may have been levied upon the said Plaintiff or Plaintiffs, in case any Levy thereof shall have been made, shall not be entitled to recover any more or greater Damages than the Sum of Twopence, nor any Costs of Suit whatsoever, unless it shall be expressly alleged in the Declaration in the Action wherein the Recovery shall be had, and which shall be in an Action upon the Case only, that such Acts were done maliciously and without any reasonable and probable Cause.

II. And be it further enacted, That such Plaintiff shall not be entitled to recover against such Justice any Penalty which shall have been levied, nor any Damages or Costs whatsoever, in case such Justice shall prove at the Trial that such Plaintiff was guilty of the Offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater Punishment than was assigned by Law to such Offence.

## 48° GEORGII III. REGIS.

## CAP. CXLV.

[In force. Annuities to then existing Incumbents regulated by 54 G. 3, c. 94.]

*An Act for enabling his Majesty to grant Annuities to the Judges of the Courts of Session, Justiciary, and Exchequer in Scotland, upon the Resignation of their Offices.*—[2d July 1808.]

§ 1. His Majesty may grant Annuities for Life to the Judges of the Court of Session and Barons of Exchequer in *Scotland* on their Resignation, not exceeding Three-fourths of their Salary. Conditions on



which Annuities shall be granted, Fifteen Years Service or permanent Infirmary.—II. Successors of Judges, etc., shall receive their Salaries from the Death, etc., of the Predecessor.

*Judicial  
Arrangements.*

## 48° GEORGII III. REGIS.

### CAP. CXLVI.

*An Act for vesting the Stock of the Court of Session in Scotland in Trustees, for the erecting Buildings for the better Accommodation of the College of Justice, and a Public Gaol, in the City of Edinburgh, and for other Purposes therein mentioned.*—[2d July 1808.] [Spent.]

## 48° GEORGII III. REGIS.

### CAP. CLI.

*An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords.*—[4th July 1808.] ["Administration of Justice and Appeals, 1808."]

**WHEREAS** the great Extension of Agriculture, Commerce, Manufactures, and Population, and the consequent Multiplication of Transactions in *Scotland*, have greatly increased the Number of Law Suits brought into the Court of Session, whereby it has become expedient to make some new Arrangements in that Court to facilitate the Dispatch of Business : And whereas it is also expedient to make such Regulations as are herein after provided touching Appeals ; May it therefore please your Majesty that it may be enacted ; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That on and after the Twelfth Day of *November* One thousand eight hundred and eight, the Judges or Lords of Session shall usually sit in Two Divisions, and the Lord President of the whole Court and Seven of the Ordinary Lords of Session shall form One and the First of the said Divisions ; and the Lord Justice Clerk for the Time being and Six of the Ordinary Lords of Session shall form the other and Second of the said Divisions.

Lords of Session  
to sit in Two  
Divisions.

*Infra*, § 9-11.

II. And be it enacted, That such Seven of the Ordinary Lords of Session shall be the Judges who shall usually sit in One of the said Divisions, and such Six shall be the Judges who shall usually sit in the other of the said Divi-

Of whom such  
Divisions shall be  
composed.

*Judicial  
Arrangements.*

*Am. by* 59 G. 3,  
c. 45, § 1-6; 6  
G. 4, c. 120, § 1;  
1 W. 4, c. 69, § 20.

An equal number  
of Judges of Justiciary  
to be in each  
Division.

*Rep. by* 53 G. 3,  
c. 64, § 16.

Place of Meeting  
of each Division  
to be in the Ap-  
pointment of his  
Majesty; and the  
Judges to make  
Regulations for  
their Sitting.

*A. of S.*, 11 July  
1828, § 71, etc.

The Ordinary  
Judges to officiate  
in the Outer  
House and Bill  
Chamber, etc.

*Infra*, § 9.

*Am. by* 53 G. 4,  
c. 64, § 1, 6, 7;  
59 G. 3, c. 45, § 2;  
1 W. 4, c. 69, § 20;  
1 & 2 V., c. 118,  
§ 1, 4.

Judges in each  
Division to exer-  
cise the same

sions, as his Majesty shall appoint; and the Lord President of the whole Court shall preside in the First of the said Divisions and the said Lord Justice Clerk shall preside in the Second of the said Divisions; and in the Absence of the Lord President and Justice Clerk respectively, One of the Ordinary Lords of the said respective Divisions, that is to say, such Ordinary Lord as the Judges then present shall appoint, shall preside in such Divisions respectively.

III. And be it enacted, That in each of the said Divisions there shall be an equal Number of the Judges of the Court of Justiciary, including the Lord Justice Clerk.

IV. And be it enacted, That from and after the said Twelfth Day of *November* One thousand eight hundred and eight, the said Judges in each Division respectively shall sit in such Rooms or Places as his Majesty, his Heirs and Successors, shall appoint, and each of the same shall sit on the same Days as have hitherto been the Days of sitting of the whole Court for the Dispatch of Business during the Time of Session, at such Hours as the Court of Session by any Regulations to be made by the whole Court, or a Quorum thereof, consisting of Nine of the Judges thereof, shall appoint; and the said Court is hereby authorized and required, by Act of the whole Court or of such Quorum, to make or establish such Regulations before the Twelfth Day of *November* One thousand eight hundred and eight; provided, that the Judges in each Division shall have the same Powers with respect to Adjournment which the Judges of the whole Court now possess.

V. And be it enacted, That the Ordinary Judges of each Division, exclusive of the Lord President and Lord Justice Clerk, shall officiate in the Outer House and Bill Chamber, and in performing therein the Duties of Ordinaries of each Division in the Manner which has hitherto been practised by the Ordinary Judges of the whole Court, until it shall be otherwise provided by Parliament: Provided always, That Two of the said Judges, One for each Division, shall officiate each Week in the Outer House, for hearing Causes in the Rolls of Suspensions, Advocations, Regulations, and Ordinary Actions, and that Two Judges, One for each Division, shall each Week officiate in the Bill Chamber in the Time of Session; but that it shall be competent to the whole Court, or a Quorum thereof as aforesaid, to establish such Regulations with regard to Lords Ordinary officiating in the Bill Chamber during the Vacation as shall be deemed expedient.

VI. And be it enacted, That the Judges sitting in the said respective Divisions, or so many of them as shall form Quorums thereof respectively as herein after mentioned,

shall be competent to exercise, and shall and may exercise, except in Cases herein excepted, the like Duties, Powers, and Functions in all Respects, and with the same and the like Authority and Effect, in all Cases and Matters that shall come before them, as are now exercised by the Lords of Session sitting together in Court, or a Quorum of them, and shall also enjoy the like Authorities and Privileges as are now enjoyed by the said Lords so sitting, or such Quorum.

*Quorum and Equality.*

Powers as heretofore.

VII. And be it enacted, That Four Judges in each Division shall be deemed to be a Quorum thereof.

Quorum.

*Am. by 50 G. 3, c. 112, § 32; 2 W. 4, c. 5, § 2.*

VIII. And be it enacted, That the Judges presiding in each Division shall, in case of Difference of Opinion, have One Voice, but not a casting Voice; and in case there shall be an Equality of Voices, the Cause or Matter shall remain for subsequent Discussion and Decision; and in case, upon such subsequent Discussion and Decision, there shall be again an Equality of Voices, the Judges of the said Division shall call in One of the Lords Ordinary of the same Division from the Outer House, in the Order of their Seniority as Judges, to be present at the Discussion, and to vote in such Case.

In Cases of Equality of Voices, how Decisions shall be made.

*Am. by 58 G. 3, c. 64, § 13; 1 & 2 G. 4, c. 38, § 3.*

*Modern Rule. See 6 G. 4, c. 120, § 23; 13 & 14 V., c. 36, § 35.*

IX. And be it further enacted, That all Causes, Actions, Processes, or Matters, which according to the present Law and Practice come in the First Instance into the said Court as Inner House Causes, shall at the Choice of the Party instituting the same be brought before either of the said Divisions; and that Causes, Actions, Processes, or Matters, which according to such Practice are brought into the Outer House or Bill Chamber before any of the Ordinary Lords, shall, at the Choice of the Party instituting the same, be brought before the Ordinary Lords of such Division, as the Party instituting the same shall think proper to resort to, and shall not be removeable except into that Division to which the Lords Ordinary belong under the Provisions of this Act; and all Causes, Actions, Processes, and Matters shall be considered as being under the Jurisdiction of the respective Divisions of the Judges before which they are brought, or to which the Lords Ordinary before whom they are brought belong; and the Decrees or Decisions of such Division of Judges or Lords Ordinary shall not be subject to Review in the Court of Session by the other Judges, save that those of such Lords Ordinary shall be subject to be reviewed by that Division of Judges to which such Lords Ordinary belong; provided, that where any Action, Matter, Process, Complaint, or Cause has been brought before one of the said Divisions or the Lords Ordinary thereof, the other Division or the Lords Ordinary thereof shall remit

Inner House Causes may be brought before either Division, and Outer House Causes before the Lords Ordinary, etc.

*Supra, § 5.*

*See 6 G. 4, c. 120, § 1.*

*Remits ob Contingentiam; A. of S., 24 Dec. 1838, § 6.*

*Consulting other  
Judges.*

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Judges of One  
Division may state  
Questions of Law  
requiring the  
Opinion of the  
Judges of the other  
Division.

*Am. by 58 G. 3,  
c. 64, § 15; 6 G. 4,  
c. 120, § 24.  
See 13 & 14 V.,  
c. 36, § 35.*

Forms of Proceed-  
ings of both Divi-  
sions to be the  
same, and no alter-  
ation to take place  
but by Acts of  
Sederunt.

Regulations to be  
made respecting  
the Six Principal  
Clerks of Session.

any Action, Process, Matter, Complaint, or Cause subsequently brought before them, relating to the same Subject, Matter, or Thing, or having a Connection or Contingency therewith, to the Consideration of the Division or Lords Ordinary before whom the first Cause, Action, Process, Complaint, or Matter had been previously brought; which Remits shall be made in such Form and Manner as is now used, or as shall be established by future Regulations of the whole Court or a Quorum of Nine Judges thereof, and which such Court or Quorum is hereby authorized, and, if the same shall be necessary, required to make.

X. And be it enacted, That it shall be competent to the Judges of either Division, or the Quorum thereof, in any Cases which shall appear to them to be Cases of Importance and Difficulty, to state Questions of Law in Writing, arising on such Cases, and to require the Opinions of the Judges of the other Division to be given thereupon, and such Judges shall be bound to communicate their Opinion thereupon, either as a collective Body or as individual Judges.

XI. And be it enacted, That the Forms of Proceeding and Process before each of the said Divisions of the Judges respectively, and before the Lords Ordinary of each respectively, shall be the same, and no Alteration thereof shall take place but by Acts of Sederunt of the whole Court, or a Quorum of Nine Judges thereof, assembled by the Lord President, to which Court or Quorum it shall be competent to make such Alterations and Regulations concerning such Forms of Proceeding and Process as shall appear to be necessary or expedient; and all the lawful Powers of the Court of Session, or any Quorum thereof, to make Acts of Sederunt, and all other lawful Powers, Duties, or Functions of the said Court, or any Quorum thereof, save as the Exercise of their Powers, Functions, or Duties is regulated by this Act, shall remain and be in full Force.

XII. And be it enacted, That it shall be competent to the said Court or a Quorum of Nine Judges thereof, assembled by the Lord President, to make interim Regulations, until Provisions shall be made for that Purpose by Parliament, with regard to the Duties to be performed by the Six Principal Clerks of Session in the said Divisions: Provided always, that each of the said Principal Clerks shall be entitled to act in either Division, and that the said Principal Clerks shall be entitled to carry on their official Business in their Offices and in Court, in conformity to the present Practice, and that it shall be competent to the said Court to make interim Regulations with regard to the Duties to be

performed by the Depute Clerks in the Outer House, and by the Clerk or Clerks in the Bill Chamber, and other Officers of Court, as shall appear expedient for carrying on the Business of each of the said Divisions in a proper Manner.

XIII. And be it enacted, That the different Causes which shall be depending before any Lords Ordinary on the said Twelfth Day of *November* One thousand eight hundred and eight, shall, from and after that Day, belong to the Division of which the Lord Ordinary before whom they are depending shall, under the Provisions of this Act, be a Part or Member; and that such Causes as shall be depending in the Inner House on and prior to the Twelfth Day of *November* One thousand eight hundred and eight, shall from and after that Day belong to the Division of which the Lord Ordinary before whom they depended at the Time they were last brought from a Lord Ordinary into the Inner House shall, under the Provisions of this Act, be a Part or Member, and that all other Causes which shall be depending in the Inner House on and previous to the said Twelfth Day of *November* One thousand eight hundred and eight, whether they were brought into the Inner House originally in the First Instance, or depended when last brought into the Inner House before a Lord Ordinary, since deceased, shall be distributed between the said Divisions of the Judges as they stand upon the Roll upon such Day; that is to say, the First Cause upon the Roll shall belong to the First of the said Divisions, and the Second Cause then upon the Roll shall belong to the Second of the said Divisions, and so on successively and alternately; and in Cases in which, after such Divisions of the Judges shall have taken place as aforesaid, Causes shall be remitted by the House of Lords to the Court of Session, and when there shall be at the Date of such Remits no Lords Ordinary to such Causes, the First of such Causes so remitted shall belong to the Division in which the Lord President of the whole Court presides, and the Second to the other Division, and so on successively; and where there are Lords Ordinary to such Causes, the respective Causes shall be remitted to the Division in which the Lords Ordinary to such Causes respectively belong: Provided nevertheless, that in all Causes in which the House of Lords shall think proper expressly in any Remit to the Court so to require the Judges of the Division of the Court of Session to which the Cause or Matter shall after such Remit belong, shall be bound to require the Opinion of the Judges of the other Division in Matters or Questions of Law in Writing, and such Judges of the other Division shall be bound to give and communicate the same in Manner herein-before provided.

*Temporary  
Provisions.*

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Causes depending,  
how to be dis-  
posed of.

*Appeal to  
Parliament.*

Court of Session  
to meet to form  
Regulations.

Appeals to the  
House of Lords.

*Am. by 6 G. 4,  
c. 120, § 40; Id.,  
§ 25-6; 13 & 14 V.,  
c. 36, § 5.*

Respecting Inter-  
locutors.

*Reponing after  
Expiry of Reclaim-  
ing Days. See 13  
& 14 V., c. 36, § 23.*

Copy of the Peti-  
tion of Appeal to  
be laid before the  
Judges of the  
Division to which  
the Cause belongs.  
*Infra*, § 18.

XIV. And be it enacted, That for the Purposes afore-  
said, the Court of Session is hereby authorized to meet  
after the passing of this Act on any Days, either in Time of  
Session or during Vacation, Nine of the said Judges being  
a Quorum, and the said Court being assembled by the Lord  
President, in order that such Regulations may be made,  
and such Distribution of Causes may take place as shall be  
necessary or proper for carrying this Act into Execution.

XV. And be it enacted, That hereafter no Appeal to  
the House of Lords shall be allowed from interlocutory  
Judgments, but such Appeals shall be allowed only from  
Judgments or Decrees on the whole Merits of the Cause,  
except with the Leave of the Division of the Judges pro-  
nouncing such interlocutory Judgments; or except in Cases  
where there is a Difference of Opinion among the Judges of  
the said Division; nor shall any Appeal to the House of  
Lords be allowed from Interlocutors or Decrees of Lords  
Ordinary which have not been reviewed by the Judges  
sitting in the Division to which such Lords Ordinary  
belong: Provided, that when a Judgment or Decree is  
appealed from, it shall be competent to either Party to  
appeal to the House of Lords from all or any of the Inter-  
locutors that may have been pronounced in the Cause, so  
that the whole, as far as it is necessary, may be brought  
under the Review of the House of Lords.

XVI. Provided always, and be it enacted, That if the  
Reclaiming or Representing Days against an Interlocutor  
of a Lord Ordinary shall, from Mistake or Inadvertency,  
have expired, it shall be competent, with the Leave of the  
Lord Ordinary, to submit the said Interlocutor, by Petition,  
to the Review of the Division to which the said Lord  
Ordinary belongs; but declaring always, that in the Event  
of such Petition being presented, the Petitioners shall be  
subjected in the Payment of the Expenses previously in-  
curred in the Process by the other Party.

XVII. And be it enacted, That when any Appeal is  
lodged in the House of Lords, a Copy of the Petition of  
Appeal shall be laid by the Respondent or Respondents

XV. Jeffrey, 11 June 1824, 2 S. Ap. 849.—Tod, 26 March 1827, 2 W. & S. 542.—Downe, 24 June 1829, 3 W. & S. 472.—Hunter, 11 August 1832, 6 W. & S. 206, 211.—Walker, 29 May 1841, 3 D. 967.—Flowerdew, 19 July 1849, 11 D. 1470.—Bartonhill Coal Company, 17 June 1858, 20 D. Ap. 13.—Scots Mines Co., 30 June 1859, 21 D. Ap. 8.—Johnston, 10 Aug. 1859, 8 M.Q. 619.

XVI. Scottish Union Co., 8 July 1836, 14 S. 1114.—Thom, 24 May 1811, 16 F. C. 250.—Brumby, 14 Nov. 1822, 2 S. 15.—Arnott, 4 Feb. 1828, 4 S. 427.—Brook, 8 July 1826, 4 S. 815.—Milla, 6 June 1829, 7 S. 716.—Babington, 20 Feb. 1841, 3 D. 611.—Williams, 12 June 1841, 3 D. 1014.—Plock, 16 Dec. 1841, 4 D. 271.—Forbes, 17 June 1843, 5 D. 1212.—Alexander, 17 June 1845, 7 D. 884.—Waterston, 27 Feb. 1852, 14 D. 546.

XVII. Torrance, 8 Feb. 1822, 1 S. 301.—Struthers, 10 Feb. 1848, 10 D. 675.—Young, 11 March 1852, 14 D. 746, 811.

before the Judges of the Division to which the Cause belongs; and the said Division, or any Four of the Judges thereof, shall have Power to regulate all Matters relative to interim Possession, or Execution, and Payment of Costs and Expenses already incurred, according to their sound Discretion, having a just Regard to the Interests of the Parties, as they may be affected by the Affirmance or Reversal of the Judgment or Decree appealed from.

XVIII. And be it enacted, That it shall not be competent by Appeal to the House of Lords, touching the Regulations so made as to such interim Possession, Execution, and Payment of Expenses or Costs, to stop the Execution of such Regulations as shall have been so made as aforesaid respecting the same; Provided that when the Appeal touching the Judgment or Decree appealed from shall be heard, it shall be competent for the House of Lords to make such Order and give such Judgment respecting all Matters whatsoever which shall have been done or have taken place in pursuance of or in consequence of such Regulations so made as to interim Possession, Execution, and Payment of Expenses or Costs, as the Justice of the Case shall appear to the said House of Lords to require.

XIX. And be it enacted, That if upon hearing the Appeal it shall appear to the House of Lords to be just to decree or adjudge the Payment of Interest, simple or compound, by any of the Parties in the Cause to which such Appeal relates, it shall be competent to the said House to decree or adjudge the Payment thereof, as the said House in its sound Discretion shall think meet.

XX. And be it enacted, That if any Appeal presented after the passing of this Act to the House of Lords against an Interlocutor or Decree of the said Court, or either of the Divisions thereof, shall be dismissed for want of Prosecution, it shall be lawful for any Respondent in such Appeal to apply by Petition to that Division of the Court of Session to which such Cause shall belong, and it shall be competent to the Judges of the said Division, upon such Petition, to decree Payment of Interest, simple or compound, by the Appellant to such Respondent, in such Manner as the said Division in its sound Discretion shall think meet, together with the Costs or Expenses which have been incurred in consequence of such Appeal.

XXI. And be it further enacted, That as often as a Vacancy of the Office of a Judge shall happen among the Judges of either Division, the same shall be filled up according to the present Law and Practice of Scotland; provided that such new appointed Judge shall go through the Forms of Admission in that Division of Judges only to which

*Appeal to  
Parliament.*

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Regulations as to interim Possession, etc., not to be stopped on account of Appeal to the House of Lords.

See 6 G. 4, c. 120, § 42.

House of Lords may adjudge Payment of Interest.

*Infra*, § 20.

See 17 & 18 V., c. 90, § 3.

Respondents in Appeals dismissed may apply for Interest to the Division to which the Cause belongs.

See 6 G. 4, c. 120, § 21.

Vacancies of Judges to be filled up as heretofore.

*Commission of Inquiry.*

Commissioners to be appointed to inquire into the Forms of Process in the Court of Session, and to report in what Cases Trial by Jury could be usefully established, etc.

he is appointed, unless an Objection is made to his Admission, in which Case the Objection shall be decided by the whole Court.

XXII. And whereas the Appointment of Commissioners with Powers to inquire into the Administration of Justice in *Scotland* relating to Matters of a Civil Nature, and particularly into the Forms of Process in the Court of Session, whose Proceedings shall be reported to his Majesty, and laid before both Houses of Parliament, would be expedient: And whereas it would be expedient that Regulations should be established relative to the Causes or Processes which may at present be brought into the Court of Session by Advocation, Suspension, or Reduction, or in the First Instance, and relative to those of a Civil Nature which may be brought before the Circuit Court of Justiciary by Appeal: And whereas it has been conceived that it might be for the Utility of the Subjects within *Scotland*, that Jury Trial should be introduced into the Proceedings in certain Causes before the Court of Session: And whereas the Fees or Dues exigible by the Clerks and other Officers of the Court of Session, and Members of the College of Justice, or other Persons connected with the said Court in their official Capacity, and the Fees exigible by the Clerks and other Officers in the Sheriff, Admiralty, Commissary, and other Courts in *Scotland*, require to be revised, and in many Particulars regulated: And whereas it would be expedient that proper Regulations should be established, relative to the Extracts of Decrees, or of the Proceedings now in Use in *Scotland* in the Superior and Inferior Courts, and relative to the said Fees: And whereas it is expedient that due and proper Information should be obtained touching such Matters as aforesaid, and as are herein after mentioned, to the intent that salutary Regulations should be made and established by due Authority: Be it therefore enacted, That it shall be lawful, and full Power is hereby given, to such Persons as shall be for that Purpose named and appointed by his Majesty, by Letters Patent, or any Instrument in Writing under his Royal Sign Manual, or any Three of them, to meet at and upon such Place and Day as in such Letters Patent or Instrument shall be for that Purpose named, or at and upon such Place and Day as they, or any Three of them, giving Notice to the others of them, shall appoint, and so thereafter at such Times and Places as they or those present from Time to Time at Meetings shall appoint; and after chusing a Preses and Clerk, to make full Inquiries into the Forms of Process in the Court of Session, and to report in what Cases, and in what Manner and Form it appears to them that Jury Trial could be most usefully established in that Court; and



further, to report in what Manner the present Form of Process in that Court might be improved by conducting more of the Pleadings viva voce, by limiting the Power vested in single Judges of frequently reviewing their own interlocutory Judgments, by obviating Inconveniences arising from the Mode now practised, in taking Proofs by Commission, and by Regulations relative to the Proceedings in the Bill Chamber ; and particularly to inquire and report whether it would be expedient that the Ordinary Judges of the said Divisions should officiate in the Outer House and Bill Chamber, and in performing therein the Duties of Ordinaries, in the Manner which has been hitherto practised by the Ordinary Judges of the whole Court, or in what other Manner, and especially whether it would be expedient that some of such Judges should constantly or usually perform the Duties of Ordinaries in the Outer House and Bill Chamber, and that others of the said Judges should constantly or usually officiate in the Inner House ; and also to make Inquiry into the Proceedings in the Admiralty and Commissary Courts, and in the Inferior Courts in Scotland, relative to Matters of a Civil Nature, and to report in what Manner these may be improved, and also to state what Regulations appear to them proper to be adopted relative to Processes or Causes brought into the Court of Session by Advocation, Suspension, or Reduction, or in the First Instance, or before the Circuit Court of Justiciary by Appeal, and also to make Inquiry into the present Forms of the Court of Session in extracting Decrees, Registration of the same, and Execution thereon, or upon Letters of Diligence passing the Signet, or any other Matters touching the Process or Proceedings of the said Court, and to set down in Writing such Alterations or Amendments as shall appear to them to be most reasonable, and best calculated for the due Administration of Justice in the said Courts ; and also to inquire into the Fees, Perquisites, and Emoluments claimed by or belonging to the Clerks and Officers of the said Court, and other Members of the College of Justice, or Persons connected with the said Court, the Faculty of Advocates excepted, and how far the same are now reasonable, or ought to be allowed, or increased, and particularly what Satisfaction it may be just and reasonable to make to any such Persons, in consequence of their being deprived of their Fees, Dues, or Emoluments, or any of them, by reason of the Alterations and Regulations introduced by this Act, or in case they should be deprived thereof by the Adoption of any Alterations or Amendments to be proposed by such Persons as aforesaid, if the same should be adopted ; and also to inquire into the Fees, Perquisites, or Emoluments claimed by the Clerks and other

*Commission of Inquiry.*

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Commission of Inquiry.

Officers in the Sheriff, Admiralty, Commissary, and other Courts in Scotland; and generally to set down in Writing and report what shall appear to them material to be reported touching all and every the Matters aforesaid; and the said Persons shall, and are hereby required to report the whole of their Proceedings to his Majesty on or before the Twelfth Day of *November* One thousand eight hundred and nine; and which Report, when made, it is hereby provided shall be laid before both Houses of Parliament by One of his Majesty's principal Secretaries of State: Provided, that it shall be competent to the said Persons to report, from Time to Time, on or before the said Twelfth Day of *November* One thousand eight hundred and nine, such Part or Parts of their Proceedings as they shall have it in their Power to report, relating to any of the Objects of their Inquiry; and particularly, they are hereby required to report, as soon as conveniently may be, with respect to Trial by Jury, the Proceedings in the Outer House and Bill Chamber, the Regulations proper to be adopted relative to Processes in Causes brought into the Court of Session by Advocation, Suspension, or Reduction, or in the First Instance; and relative to those of a Civil Nature which may be brought before the Circuit Court of Justiciary by Appeal; and with regard to the present Forms of the Court of Session in extracting Decrees; and with respect to the other Matters appointed to be the Subjects of their Inquiry, to report thereupon in such Order as to them shall seem most expedient; yet so nevertheless as that their Report upon the whole of the Matters submitted to their Consideration, shall be made on or before the said Twelfth Day of *November* One thousand eight hundred and nine.

*Ext. by 49 G. 3. c. 119, to 1 Jan. 1810.*

## 50° GEORGII III. REGIS.

## CAP. XXXI.

[This Act repeals expressly or virtually the following previous Enactments on the Subject:—82 G. 2, c. 86, in part; 5 G. 3, c. 47, in part; 26 G. 3, c. 46; 39 G. 3, c. 110; 39 & 40 G. 3, c. 55.]

*An Act for augmenting the Salaries of the Lords of Session, Lords Commissioners of Justiciary, and Barons of Exchequer in Scotland, and Judges in Ireland.*—[18th May 1810.]

This and the other Acts noted on the margin are now expired or spent.

## 50° GEORGII III. REGIS.

## CAP. CXII.

*An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court.*—[20th June 1810.]

[Extract Act, 1810. In printing this Act, as well as the Acts 59 G. 3, c. 35, and 1 & 2 V., c. 118, the smaller type has been used; as the Enactments in question are not of much importance in practice.]

48 G. 3, c. 151.

49 G. 3, c. 119.

**W**HEREAS an Act was passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords*, by which Act his Majesty was empowered to name and appoint, and pursuant to which his Majesty did name and appoint, by his Majesty's royal Sign Manual, certain Persons to make Inquiries into the Form of Process in the Court of Session, and to report upon various Matters therein particularly set forth: And whereas an Act was passed in the last Session of Parliament, intituled, *An Act to give to the Persons named by his Majesty, pursuant to the said recited Act, farther Time for making their Report or Reports*: And whereas the Commissioners so appointed have made Two Reports to his Majesty and the Two Houses of Parliament relative to the Subject Matter upon which they were directed to report: And whereas it is expedient that the Mode of extracting judicial Acts and Decrees of the Court of Session hitherto in Use should be altered, and a more abridged Form adopted; and that other Regulations should be established, and Amendments made in the Forms of that Court; which cannot be effected without the Authority of Parliament: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the present Mode of extracting judicial Acts and Decrees shall, from and after the passing of this Act, cease and determine, together with all the Fees and Dues exigible for such Extracts, or relating thereto: Provided nevertheless, that the Fees now payable to the Lord Chief Clerk Register, and to the Macers of the Court of Session, and to the Keeper of the Minute Book upon Acts and Decrees, and to the Housekeepers upon Abbreviates of Adjudication, shall continue to be paid and payable upon the abridged Forms of Extract prescribed by this Act.

See 1 & 2 G. 4, c. 38, § 17, 18, 23, 26; 18 & 14 V., c. 86, § 25, 28, 29.

*Act of Reg.* 1695, § 17 (*Al. Abr.*, App., p. 183). *A. of S.*, 20 Jan. 1671; 11 July 1828, § 116; 24 Dec. 1838, § 6.

Extracts of Decrees at present in Use abolished.

Certain Fees on abridged Forms of Extract to be continued.

Forms of Extracts to be observed.

II. And be it enacted, That the Forms herein prescribed for the Extract of judicial Acts and Decrees, and the Rules and Regulations made relative thereto, shall, from and after the passing of this Act, be observed in all Cases, whether of Actions and Processes at present or then depending, or which may in future come into Court, or of those which, although finished, have not been taken out of Court by a final extracted Decree; and the Fees and Dues hereby made payable in the case of Extracts, and no other, shall, from and after the passing of this Act, be the Fees and Dues payable for such Extracts.

III. And be it enacted, That in Actions for Payment or Performance, or such other common Proceedings, and in Processes of Advocation or Suspension, the Extract of the Decree shall, from and after the passing of this Act, be in the Form appearing from Schedules (A.) (B.) (C.) (D.) and (E.), hereunto annexed, respectively.

Forms of Extract in common Actions and in Advocations and Suspensions.

IV. And be it enacted, That in Processes of Adjudication the Ex-

*Extracts and Certified Copies.*

Form of Extract  
in Adjudications.

Form of Extract in  
Cessio Bonorum.

Form of Extract in  
Actions of Proving  
the Tenor.

Form of Extract  
in Actions of  
Declarator.

Form of Extract  
in Actions of  
Ranking.

No Acts in certain  
Actions henceforth  
to be pronounced.

Form of Extract  
in all Cases not  
particularly pro-  
vided for.

*As to Interim De-  
cree, see 13 & 14  
V., c. 36, § 28.*

Certified Copies in  
Cases of Appeal.

*Am. by 1 & 2 G. 4,  
c. 38, § 25.  
See 6 G. 4, c. 120,  
§ 26.*

No Record Copy  
to be made:

Proceedings to be  
transmitted to  
General Register  
House.

tract of the Decree shall, from and after the passing of this Act, be in the Form which has heretofore been used for the Abbreviate of the Adjudication in case a Decree shall be pronounced for the Adjudger; but where the Defender is assolized, the Extract shall be in the Form hereinbefore directed to be used in the case of Decrees of Absolvitor.

V. And be it enacted, That in Actions of Cessio Bonorum, the Extract of the Decree shall be in the Form at present used for the Abstract in Decrees of Cessio, with an Addition thereto of the Names of all the Creditors cited.

VI. And be it enacted, That in Actions of Proving the Tenor and Transumpt, the Extract shall contain a Copy of the Deed proved or transumpt, with the Judgments pronounced by the Court, reduced into the Form of what is at present termed the Grand Decerniture, in Cases where Decree shall be pronounced in favour of the Pursuer; and in Cases where the Defender shall be assolized, the Extract shall be in the Form hereinbefore prescribed in Decrees of Absolvitor.

VII. And be it enacted, That in actions of Declarator, the Extract of the Decree shall contain the Conclusion of the Summons and the Judgments pronounced by the Court, reduced into the Form of the present Grand Decerniture.

VIII. And be it enacted, That in Actions of Ranking and Sale, the following Regulations shall be observed: First, the Extract of the Act and Commission for proving the Value of the Subject to be sold, shall be in the Form appearing from Schedule (F.), hereunto annexed; Secondly, the Extract of the Decree of Sale shall be in the Form appearing from Schedule (G.), hereunto annexed; Thirdly, the Extract of the Decree of Ranking shall be in the Form appearing from Schedule (H.), hereunto annexed; Fourthly, the Extract of the Decrees of Division shall be in the Form appearing from Schedule (I.), hereunto annexed; Fifthly, there shall no longer be any Extract of the Decree of Certification, in a Process of Ranking and Sale, nor any Act of Roup, pronounced, nor consequently any Extract thereof, the Letters of Publication now in Use rendering such Acts unnecessary, but the Extract of Letters of Publication shall be continued in their present Form.

IX. And be it enacted, That in Actions of Proving the Tenor and of Reduction, no Act shall henceforth be pronounced; and in Actions of Improbation, Acts for First and Second Terms shall be discontinued.

X. And be it enacted, That in all other Cases not herein particularly described, whether arising upon Summons, Bill, or Petition, or Petition and Complaint, the Extract of the Decree shall be according to the Forms herein set forth, with such Variations as the Nature of the Case and the Form of the Application may necessarily require.

XI. And be it enacted, That where an Appeal shall be taken to the House of Lords, a full Copy of the printed Papers given into the Court of Session, certified by One of the principal Clerks of Session, together with Copies, so certified, of such Interlocutors and Minutes of the Court, as shall have been pronounced or framed subsequent to the Date of the last of these printed Papers, shall and may be received in Evidence in such and the like Manner as Extracts of the whole Proceedings are at present.

XII. And be it enacted, That no Record Copy, as it is termed, shall henceforth be made; but at the Expiration of Five Years after the Date of the final Decree, or last Proceeding in that Court, each Process, with all the Steps of Proceeding in it, and Productions, not taken up by the Parties, shall be transmitted to and lodged in the General Register House, under the Custody of the Lord Clerk Register of Scotland, and a Duplicate shall be made of all Extracts and Decrees in the Form herein prescribed for which no Fees shall be exigible, ex-

cept the ordinary Charge for Copying, paid for Copying at the Time in the Court of Session; which Duplicates shall from Time to Time be bound up in convenient Volumes, and after remaining not more than Five Years after the Date of the final Decreet in the Office of the Clerk wherein such Duplicates shall have been made, shall at the Expiration of that Period be regularly transmitted to the said General Register House.

XIII. And be it enacted, That the Offices of Extractors in the Court of Session, as heretofore constituted, shall be abolished, and the Six Assistants of the principal Clerks of Session shall prepare the abridged Forms of Extract herein directed to be observed; each Assistant executing that Duty in such Processes as belong to the Department or Closet of the principal Clerk under whom he acts, or the corresponding Depute Clerk in the Outer House.

XIV. Provided always, and be it enacted, That it shall and may be lawful for any Party to require, and the said Assistants respectively are hereby required, to furnish to such Party authenticated Copies of all or any Part of the Proceedings in any Cause, signed by One of the principal Clerks of Session, and which Copy the principal Clerks of Session are hereby respectively required to sign, but no Fee whatever shall be paid or payable for such Copy, save and except the ordinary Charge for copying, paid at the Time in the Court of Session.

XV. And be it enacted, That each of the present Assistants of the principal Clerks who are directed to prepare the abridged Forms of Extract hereby prescribed, shall continue to exercise and enjoy the Office of Extractor, hereby conferred upon him, *ad vitam aut culpam*: Provided always, that every other Person to be appointed a Clerk's Assistant, and thereby an Extractor of such abridged Forms, shall be and continue, in respect of his Office of Extractor, in such and the same Situation as any Clerk Assistant is at present in respect of such Office of Clerk Assistant.

XVI. And be it enacted, That the said Assistants of the Clerks shall and may continue to receive the Fees to which as such Assistants they are at present or may in future be entitled; but in their Character of Extractors, according to the new Forms hereby established, they shall be entitled to no Fee whatever except the ordinary Charge for copying, paid for copying at the Time in the Court of Session; neither shall the principal Clerks or the Depute Clerks of Session be entitled to any Fees whatever; but declaring that the said Clerks and the said Assistants of the principal Clerks, in their Character of Extractors, shall be paid the following Salaries; videlicet, each principal Clerk of Session shall receive a Salary of One thousand Pounds Sterling per annum, without Prejudice to the Salary of Forty Pounds payable to the King's Clerk, and without Prejudice also to the Fees to which any of them may be entitled in case he shall hold the Office or Situation of Keeper of the Register of Tailties; each Depute Clerk of Session shall receive a Salary of Four hundred Pounds Sterling per annum, without Prejudice to the Salary of Ten Pounds payable to the King's Depute Clerk; each Assistant of the principal Clerk shall receive a Salary of Two hundred Pounds Sterling per annum, for preparing the abridged Forms of Extract herein prescribed, without Prejudice to the Salary of Ten Pounds per annum to the present King's Extractor during his Life.

XVII. And be it enacted, That the Salaries herein before provided shall, from and after the passing of this Act, be payable quarterly out of the Fee Fund hereby established; and if such Fund shall at any Time be insufficient for the Payment of such Salaries, the Deficiencies shall be supplied, in the same Manner with the Salaries payable to the Judges of the Court of Session, out of the Monies which by several

#### *Extractor's Fees.*

Office of Extractor, as now constituted, abolished.

Authenticated Copy of Proceedings to be furnished to the Party requiring it.

*As to Production of Registers, see A. of S. 16 Feb. 1841, § 20, as am. by 16 July 1859.*

*As to Second Extracts, see A. of S., 26 Feb. 1831.*

Assistants of Principal Clerks to prepare abridged Form of Extracts. *Am. by 1 & 2 G. 4, c. 38, § 17, 18, etc.*

Fees of Clerks' Assistants to be continued, but no Fees to be paid for Extracts but those herein allowed.

*See 13 & 14 V., c. 36, § 29.*

Clerks of Session and Depute Clerks, etc., to receive Salaries.

Salaries to be paid quarterly out of the Fee Fund.

Fee Fund.

The Dues of Court specified in Schedule to form the Fee Fund.

L.200 per annum to be paid out of the Fee Fund for defraying the Expense of Office Rooms.

The present Dues of Court to be abolished, and instead thereof the Dues specified in Schedules shall be taken.

Fees on Registration, etc., to remain.

Collector of Dues to find Security.

Collector to keep Books for entering the Fees.

Money to be paid weekly into the Bank.

How balance shall be disposed of.

Acts made in the Seventh and Tenth Years of the Reign of Queen *Anne*, were charged or made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed by her Majesty, her Heirs or Successors, for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*.

XVIII. And be it further enacted, That for the purpose of raising such Fee Fund, the Fees specified in the Schedule hereunto annexed, intituled, "Dues of Court," shall be payable and exigible upon and for the several Matters therein contained.

XIX. And be it enacted, That the Sum of Two hundred Pounds Sterling per annum shall be paid out of such Fee Fund to the Order of the principal Clerks of Session, for defraying the Expense of the Office Rooms of the whole principal and Depute Clerks of Session, and all other Charges and Expenses connected therewith; and the said principal Clerks shall be bound and obliged to keep up and defray the Expenses of such Office Rooms, and to defray all such other Charges and Expenses accordingly.

XX. And be it enacted, That the Dues of Court at present payable to the Clerks of Session, and the present Office of Collector of the Clerks' Dues, shall be and the same are hereby abolished; and the Dues mentioned in the said Schedule shall be collected by a Collector appointed by the Lord President of the College of Justice, holding his office *ad vitam aut culpam*, who shall discharge his Duty by personal Attendance in Court or in the Collector's Office during Office Hours, and by marking upon each Paper that the proper Dues or Fees had been received of the Date marked, without which Marking no principal Clerk or Depute Clerk of Sessions, Lord's Clerk, or Clerk's Assistant, shall receive any such Paper into Process; and such Collector shall further demand and receive Once a Month or oftener from the Keepers of the Registers respectively, who shall be bound to pay to him the Proportion which the Clerks of Session have been in Use to receive of Fees paid upon Registration and upon Extracts of Deeds and Instruments recorded in the Books of Council and Session; and all such Fees shall form Part of the Fee Fund hereby established.

XXI. Provided always, and be it enacted, That such Fees paid upon Registration, and upon Extracts of Deeds and Instruments so recorded in the Books of Council and Session, shall remain in other respects as at present.

XXII. Provided always, and be it hereby enacted, That such Collector shall be responsible for every Person whom he may have occasion to empower to act for him in his Absence, and for every Clerk and Person employed by him in the Business of such Collection, and shall find Security for their as well as his own Intromissions.

XXIII. And be it enacted, That such Collector shall further keep regular and distinct Books for entering the Fees and Dues of Court separately of the Dates on which they are received, with the Mark of the Clerk's Office, Names of the Parties, and the Step of the Proceedings upon which the same is paid, which Books shall be open at all reasonable Times for the Inspection of the Judges, the Auditor of the Court, and the principal Clerks of Session; and such Collector shall at least Once in every Week lodge all Monies so paid to him with the Bank of *Scotland* or the Royal Bank of *Scotland*, the Interest received from which Banks respectively shall make part of the Fee Fund hereby established, out of which such Collector shall pay the Salaries herein directed to be paid by means of such Fees and Dues; and if upon the Thirty-first day of *December* in any Year any Balance shall remain upon such Account, such Balance shall be paid to the Person or Persons authorized to receive the said Monies which by the said Acts made in the Seventh and Tenth Years of the Reign of Queen *Anne* were

charged or made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*, as aforesaid.

*Trifling Causes excluded, etc.*

XXIV. And in order to check the Accounts kept by such Collector, be it enacted, That Books shall be kept by the respective Clerks of Court of each Office, shewing the Dues of Court, which, according to the Schedule hereunto annexed, have or should have been received in each Process under their Charge on the several Steps of that Process on which such Dues are payable; and such Collector shall render his Accounts at least Twice in every Year to any Accountant to be named by the President of the College of Justice; or if no such Accountant shall be named, to the Auditor of Court, who shall compare and examine the same with the Books so kept by the Clerks aforesaid, and make his Report thereupon to the Court.

Check Books to be kept.

XXV. And be it enacted, That such Collector shall receive a remuneration for his Trouble, by a Rate payable out of the said Dues of Four Pounds per centum upon the Amount thereof received by him.

Collector to be paid Four per cent. for his Trouble.

XXVI. And be it enacted, That the Nomination of each Depute Clerk of Session shall henceforth be vested in the Six principal Clerks of Session jointly, the senior Clerk having in case of Equality a casting Voice; and every such Nomination shall be made without receiving therefor any Price, Gratuity, or valuable Consideration of any Kind; and every Nomination, when made, shall be forthwith reported to the Court.

Nomination of Depute Clerks vested in principal Clerks jointly.

XXVII. And be it enacted, That in Actions at present requiring Two Diets of Appearance, there shall be only One Diet of Appearance upon an inducias of Twenty-seven Days, where a Defender is domiciled in *Scotland*; but Citations in Cases of a single Diet, and against Persons forth of *Scotland*, shall remain as at present.

One Diet of Appearance only.

XXVIII. And be it enacted, That all Causes not exceeding the Value of Twenty-five Pounds Sterling shall, from and after the passing of this Act, be carried on in the First Instance before the Inferior Judges, in the Manner directed and with the Exceptions specified in an Act passed in the Third Session of the Second Parliament of his Majesty King Charles the Second, intituled, *Act concerning the Regulation of the Judicatories*.

*Am. by 6 G. 4, c. 120, § 53; 18 & 14 V., c. 36, § 21.*

XXIX. And whereas it would facilitate the Dispatch of Business in the Court of Session, if the Duty of the Outer House were done by a certain Number of the Ordinary Judges officiating there, in a more permanent Manner than the present weekly Rotation among the whole; be it enacted, That the Three junior Ordinary Judges of the First Division of the Court of Session, and the Two junior Ordinary Judges of the Second Division, shall be relieved from Attendance in the Inner House, and shall, from and after the passing of this Act, not sit therein, but shall sit as Lords Ordinary in the Outer House to perform the Business of the Outer House; (that is to say), Two of the said Judges, One of each Division, shall officiate each Week in the Outer House, for hearing Causes in the Rolls of Suspensions, Advocations, Regulations, and ordinary Actions; and such junior Judges of either Division shall officiate as Lords Ordinary, according to the Rules and Forms of Proceeding for the Time observed in Processes depending before Lords Ordinary.

Certain Causes to be brought before Inferior Judges.

*Am. by 16 & 17 V., c. 80, § 22, 32.*

*1 W. 4, c. 69, § 21. Exceptions in St.*

*1672, c. 16, § 16, rep. by 13 & 14 V., c. 36, § 17: 16 & 17 V., c. 80, § 48.*

*Permanent Lords Ordinary appointed.*

*Am. by 6 G. 4, c. 120, § 1; 1 W. 4, c. 69, § 20; 1 & 2 V., c. 118, § 3, 4.*

XXX. And be it enacted, That this Regulation concerning Ordinary Judges in the Outer House shall include the Duty of administering Oaths and examining Witnesses, but shall not extend to the Bill Chamber, in which the Business shall continue to be done as at present, by all the Ordinary Judges in Rotation.

*To administer Oaths and examine Witnesses.*

*Rep. by 1 & 2 V., c. 118, § 3.*

XXXI. Provided always, and it is hereby provided and declared, that the present junior Judges who may be affected by this new

*Consent of Judge necessary to this new Regulation.*

Advocation, Con-  
tingency, etc.

Quorum of Inner House.  
*Am.* 48 G. 3, c. 151, § 7.  
*Ext.* by 2 W. 4, c. 5, § 2.

Grounds of Advoca-  
tion from the  
Commissary  
Court.

*Rep.* by 1 W. 4, c. 69, § 41; 6 & 7 W. 4, c. 41.

Bills of Suspens-  
ion from the  
Admiralty Court  
in Maritime •  
Causes;

*Rep.* by 1 W. 4, c. 69, § 21, 23.

To be regulated in  
Manner hereinafter  
prescribed.

*Rep.* by 1 W. 4, c. 69, § 22, 23.

Bills of Advocac-  
tion from the  
Sheriffs and other  
Inferior Judges,  
Grounds on which  
they shall be al-  
lowed.

*Am.* by 16 & 17 V., c. 80, § 24; 6 G. 4, c. 120, § 45.

*Form of Adv.*, 1 & 2 V., c. 86, § 8.

Such Bills not to  
be received against  
Judgments on  
Grounds of Error.  
*A. of S.*, 11 July  
1828, § 1.

No written An-  
swers to be al-  
lowed to Bills of  
Advocation.

*Rep.* by 1 & 2 V., c. 86, § 1, 4.

Regulation, shall not be bound by it except with their own Consent, and therefore the Course of Rotation shall remain as it is at present, until either by the Consent of the present Judges, or by new Appointments of Judges, the requisite Number can be obtained for carrying the said System into Execution.

XXXII. And be it enacted, That so soon as Five junior Ordinary Judges shall officiate as permanent Lords Ordinary in the Manner herein directed, Three Judges in either Division shall be a Quorum in the Inner House; and the other Judges of the Court of Session shall be relieved from Attendance in the Outer House, and from performing the Duties of Lords Ordinary therein.

XXXIII. And be it enacted, That Bills of Advocation from interlocutory Judgments of the Commissary Court shall be allowed only on the Ground of Contingency and Incompetency, including Incompetency in the Mode of Proof, and in this last Case only with Leave of the Commissary Court; and no Bills of Advocation from the Commissary Court shall be allowed from interlocutory Judgments upon Grounds of Iniquity or Error, but shall be competent only after final Judgment before Extract.

XXXIV. And be it enacted, That Bills of Suspension from the Admiralty Court in Maritime Causes, shall, if not refused without Answers, be in all Cases ordered to be printed and reported to either the First or the Second Division of the Court of Session; and if any such Bill of Suspension shall be presented in time of Vacation, and the Lord Ordinary on the Bills shall not see Cause to refuse the same without Answers, he shall sist Proceeding until the Meeting of the Court, to whom the same with the Answers shall be then reported.

XXXV. And be it enacted, That Bills of Advocation and Suspension from the Admiralty Court in Mercantile Causes shall be regulated in the Manner hereinafter prescribed in the Case of Advocations and Suspensions from the Judgments pronounced by Sheriffs and other inferior Judges.

XXXVI. And be it enacted, That Bills of Advocation from the Sheriffs and other inferior Judges in *Scotland*, against interlocutory Judgments, shall be allowed only upon the following Grounds: First, of Incompetency, including Defect of Jurisdiction, personal Objection to the Judge, and Privilege of Party; Secondly, of Contingency; Thirdly, of legal Objection with respect to the Mode of Proof, or with respect to some Change of Possession, or to an interim Decree for a partial Payment, provided that in the Cases specified under this Third Head Leave is given by the inferior Judge.

XXXVII. And be it enacted, That Bills of Advocation from such inferior Judges shall not in any Case be received against interlocutory Judgments upon Grounds of Iniquity or Error, but only after final Judgment shall have been pronounced.

XXXVIII. And be it enacted, That in Cases where final Judgment shall have been pronounced, no written Answer to a Bill of Advocation or Suspension from such inferior Judges shall be received, but in all such Cases, whether the Cause is brought before the Court of Session by Advocation or Suspension, the Bill shall be passed without Answers, upon Caution being found in the same Manner in which Caution is found in Bills of Suspension at present; save and except in Cases

XXXVI.—Brodie, 8 June 1821, 1 S. 52.—Monkland Canal Co. 8 Feb. 1822, 1 S. 302.—Thomson, 28 May 1822, 1 S. 440.—Scott, 27 June 1823, 2 S. 435.—Brown, 27 Jan. 1824, 2 S. 641.—Baird, 4 Dec. 1824, 3 S. 361.—Black, 19 Jan. 1832, 10 S. 205.—Stewart, 21 Nov. 1837, 16 S. 86.—Aitken, 9 June 1840, 2 D. 1029.—Murdoch, 26 Nov. 1844, 7 D. 155.—Campbell, 21 Nov. 1846, 9 D. 135.—Macphee, 15 June 1850, 12 D. 1083.—Dalmellington Iron Co. 20 March 1856, 18 D. 861.—Lyall, 6 July 1869, 21 D. 1186.



where, upon the Face of the Bill itself, it shall appear that it ought to be refused, and in every such Case it shall be refused accordingly.

XXXIX. And be it enacted, That in like manner Bills of Advocation from inferior Judges, on the Ground of Incompetency or Contingency, shall be passed without Answers or instantan refused: Provided, nevertheless, that the Lord Ordinary on the Bills may in such Cases hear Parties viva voce if he shall think fit, and such Bills may be passed without Caution.

XL. And be it enacted, That Bills of Advocation and Suspension from inferior Judges, when passed as above directed, upon being expedited or upon a Remit from the Court, shall be inrolled in the Roll of Advocations and Suspensions in the Outer House; and the Lords Ordinary in the Outer House and the Judges in the Inner House shall have the same Power in every Case of Suspension which they now have in Cases of Advocation to remit to the inferior Judge with Instructions.

XLI. And be it enacted, That Bills of Suspension and Interdict shall, with respect to Caution, remain as at present, and the Lord Ordinary may grant Interdict therein after advising the same with or without Answers, but no Replies or Duplies shall be allowed: Provided nevertheless, that the Lord Ordinary upon the Bills may if he thinks proper hear Parties viva voce before granting or refusing the Interdict.

XLII. And be it enacted, That in Bills of Suspension of Charges or threatened Charges on Bonds, Bills of Exchange, or Promissory Notes, Contracts, Decrees arbitral, or other Instruments registered for Execution, and in the Case of Bills of Suspension of Decrees of Removing, the Proceeding shall be as at present; save and except that no Replies or Duplies shall be allowed, but the Lord Ordinary on the Bills may if he thinks proper hear Parties viva voce, and may pass or refuse the Bills with or without Answers.

XLIII. And be it enacted, That in Bills of Suspension against Decrees pronounced by the Court of Session in foro, no Replies or Duplies shall be allowed, and in such Cases the extracted Decree shall be produced with the Answers.

XLIV. And be it enacted, That from and after the passing of this Act, with the Exceptions after specified, there shall be Two principal Clerks of the Bills appointed as they are at present, and only Two Depute Clerks of the Bills, each of whom shall be appointed by the Two principal Clerks jointly, without receiving for any such Appointment any Price, Gratuity, or valuable Consideration of any Kind; and in case they cannot agree upon any such Appointment, the Lord President of the College of Justice shall have the casting Voice; and in all Cases the Nomination shall be reported to the Court.

XLV. And be it enacted, That the principal as well as Depute Clerks shall personally discharge the Duties of their respective Offices; the principal Clerks shall personally attend either Division of the Court of Session when Bill Chamber Causes shall be under Consideration there, in the same Manner that the principal Clerks of Session attend the Inner House Causes; the principal Clerks of the Bills shall also further exercise a due Superintendence over the different Branches of the Duty required for the Performance of the Business of the Bill Chamber.

XLVI. And be it enacted, That the Fees payable upon the Proceedings in the Bill Chamber shall be collected and form a common Fund for the Remuneration of the principal and Depute Clerks of the Bills, and this Fund shall be divided among them monthly or quarterly as they may settle among themselves, in the following Proportions: videlicet, One-third Part thereof shall be paid to each of the principal

#### *Advocation. Suspension.*

Bills of Advocation on the Ground of Incompetency or Contingency. *Am. by 1 & 2 V., c. 86, § 3, 6.*

Bills of Advocation and Suspension, when passed, how to be proceeded in.

Bills of Suspension and Interdict.

*Am. by 1 & 2 V., c. 86, § 6.*

*See 6 G. 4, c. 120, § 40-48.*

Bills of Suspension of Charges on Bonds, etc.

*Am. by 6 G. 4, c. 120, § 40-48; 1 & 2 V., c. 86, § 4, 6.*

Bills of Suspension against Decrees of Court of Session.

*Rep. by 6 G. 4, c. 120, § 17, 21.*

Two principal and Two Depute Clerks of the Bills appointed.

The principal as well as Depute Clerks to discharge their Duty personally.

Fees on the Bill Chamber, how divisible.

*Auditor of Court.*

So much of the Regulations as relate to the Fees and Duties of the Clerks of the Bills suspended.

Clerks, and One-sixth Part thereof shall be paid to each of the Depute Clerks.

XLVII. And be it enacted, That so much of the Regulations herein enacted as relate to the Fees and Duties of the Clerks of the Bills shall be suspended so long as all or any of the present Depute Clerks, viz. *John Watson, James Mercer, Andrew Miller, and William Scott*, shall continue to hold their Offices or Office, to the Extent hereinafter specified; videlicet, upon the Death or Resignation of either of *John Watson* or *James Mercer*, present Depute Clerks to the Bills, and also Clerks to the Record of Abbreviates of Adjudications, the junior principal Clerk shall take the Burthen of causing to be discharged the Duty of the said Depute, and the Fees and Emoluments appertaining thereto shall be divided equally between the Two principal Clerks of the Bills; and upon the Death or Resignation of *Andrew Miller*, Depute Clerk, or upon the Death or Resignation of *William Scott*, assistant Clerk, or upon the Death or Resignation of both the said *John Watson* and *James Mercer*, in either of these Three Events the Two principal Clerks of the Bills shall take the Burthen of causing to be discharged the Duty of the said Person or Persons, and the Fees and Emoluments thence arising shall be equally divided between the Two principal Clerks; and in the Event of the Death or Resignation of both *Andrew Miller* and *William Scott*, the said *John Watson* or *James Mercer*, or both of them if then surviving, shall be One or both of the Depute Clerks to the Bills if they shall so incline, each drawing One-sixth Part of the total Fees, and relinquishing the Fees to which each is now entitled; but if either or both of the said *John Watson* or *James Mercer* shall decline to become Depute Clerks of the Bills, the Two principal Clerks to the Bills shall discharge or take the Burthen of causing to be discharged the whole Duty at present discharged by the said *Andrew Miller* and *William Scott*, and shall in that Case receive the Fees which would have been received by the said *Andrew Miller* and *William Scott*, until the Death or Resignation of *John Watson* and *James Mercer*.

Fees of Auditor of Court.

XLVIII. And be it further enacted, That the Fees specified in the Schedule hereunto annexed, intituled, "Rate of Fees payable to the Auditor of Court," and no other, shall be payable to and exigible by the Auditor of Court, such Fees, in the Event of there being an Auditor for each Division, being divided equally between the Two Auditors.

Fees of the Keepers of the Inner House to be equally divided.

XLIX. And be it enacted, That the Fees receivable by the Keepers of the Inner House Rolls, or Clerks of the Lords President of the Two Divisions of the Court of Session, shall form a common Fund, and be divided equally between them.

Fees to be equally divided between the Clerks to Ordinary Judges.

L. And be it enacted, That so soon as Five junior Ordinary Judges shall officiate as permanent Lords Ordinary in the Manner herein directed, the Fees payable to the Clerks of the Ordinary Judges shall form a common Fund, and shall be equally divided among the Clerks of the Thirteen Ordinary Judges of the Court of Session.

Fees demandable by Writers to the Signet specified in Schedule.

LI. And be it enacted, That Fees demandable by Writers to the Signet for Signet Letters, and for Proceedings in the Service of Heirs before the Macers of the Court of Session, shall be the Fees (and no others) appearing from the Schedule hereunto annexed, intituled, "Table of Fees of Ordinary Signet Letters, and Fees of Service before the Macers," respectively.

*Other Fees reg. by Society's Table, 10 May 1859.*

Contents of a Sheet to be 300 Words.

LII. And be it enacted, That every Sheet charged for by any Practitioner in the Court of Session shall be calculated at the Rate of Three hundred Words to the Sheet; but if any such Instrument shall contain fewer than Three hundred Words, the same shall be charged at the Rate of a Sheet; and if after finding the Sheet or Sheets which

any such Instrument shall comprise, calculated at the Rate aforesaid, any Number of Words less than Three hundred Words shall remain, such fewer Words shall be charged as a Sheet.

LIII. And whereas by the aforesaid Report by the said Commissioners, it is certified, that Compensation to a certain Amount ought to be given to the principal and Depute Clerks of Session, the Extractors, and the Collectors of Clerk's Dues, for Losses that will be sustained by them as therein mentioned, be it enacted, That the Sums of Annuity specified in the Schedule hereunto annexed, intituled, "Specific Compensations," shall be paid to the Persons therein named and described respectively, at such Time or Times in the Year, and in such Manner as other Compensations are hereinafter directed to be paid.

LIV. And be it enacted, That in the Event that any of the said principal or Depute Clerks of Session, or Extractors, shall make an Application to the Barons of Exchequer in *Scotland*, setting forth that the Compensation provided by the Salaries payable by this Act, or specified in the Schedule, is inadequate to his just Claims, and if any of the said Clerks or Extractors shall make it appear that he has suffered or will suffer pecuniary or other Loss from the Operation or Effect of any of the aforesaid Regulations beyond the Salaries allowed, and the Compensation made by this Act, due and equitable Consideration being always had of the Circumstances of each individual Case, the said Barons are hereby authorized and required to examine into such Claims, and to decide whether any and what further Sums of Compensation are due to all or any of the said Clerks or Extractors.

LV. And be it enacted, That if any other Person shall apply to the said Barons, who shall establish his Right, and make it appear that he has suffered or will suffer pecuniary Loss from the Operation or Effect of any of the aforesaid Regulations, it shall and may be lawful for the said Barons to award to such Person such Compensation as the said Barons shall find such Person entitled to, either by the Payment of a gross Sum, or by way of Annuity, as they shall think proper.

LVI. And be it enacted, That every Sum of Compensation so to be awarded by the said Barons shall be paid and payable upon the Order of the said Barons, in such Manner, and at such Time or Times, as they shall direct out of the aforesaid Monies charged or made chargeable by several Acts made in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer.

LVII. And be it enacted, That the said Barons of Exchequer shall consider the Situation of such aged and indigent Persons who may have hitherto gained their Subsistence by copying out Extracts in their present Form, and who, having been for many Years attached to the Extractor's Offices, may not be capable of gaining their livelihood otherwise, and make such Allowance or Allowances, in the way of Annuity, to such Persons respectively as the said Barons shall think proper, which shall be paid upon their Order out of the aforesaid Monies charged or made chargeable with the Fees, Salaries, and other Charges for keeping up the Courts of Session, Justiciary, and Exchequer aforesaid.

LVIII. Provided always, and be it enacted, That it shall and may be lawful for the said Barons, who are hereby required, to order and direct such Sum or Sums of Money to be from Time to Time paid to any such Officer of Court, or Person as aforesaid, who shall make Application to them pursuant to this Act, as the said Barons shall think

### *Compensation.*

Compensations to certain Officers specified in Schedule.

Application may be made to the Barons of Exchequer, if Compensation be found inadequate.

Persons suffering Loss from the new Regulations may apply to the Barons of Exchequer for Relief.

Fund from which Compensation shall be made.

Case of aged and indigent Persons who have hitherto been employed in copying Extracts to be considered and relieved.

Temporary Allowance may be given.

Compensation.

Allowances to be free from Taxes, except the Duty granted by 46 G. 3, c. 65.

*The Form of Warrant contained in the annexed Schedules is altered by A. of S., 24 Dec. 1838, in pursuance of 1 & 2 V., c. 114, § 1, 9; and 1 & 2 V., c. 118, § 18.*

proper, as an interim Allowance, until the Composition or Provision to be awarded to any such Person by virtue of this Act shall be ascertained and finally determined; and every such Allowance so ordered to be paid by the said Barons, shall be paid at the Time and in the Manner they shall direct out of the aforesaid Monies charged or made chargeable with the Fees, Salaries, and other Charges for keeping up the Courts of Session, Justiciary, and Exchequer aforesaid.

LIX. And be it enacted, That every Sum to be paid pursuant to this Act out of the aforesaid Monies charged or made chargeable with the Fees, Salaries, and other Charges for keeping up the Courts of Session, Justiciary, or Exchequer, shall be paid and payable, free and clear from all Taxes and Deductions whatsoever, except the Duty charged by an Act passed in the Forty-sixth Year of the Reign of his present Majesty, intituled, *An Act for granting to his Majesty during the present War, and until the Sixth Day of April next after the Ratification of a definitive Treaty of Peace, additional Rates and Duties in Great Britain on the Rates and Duties arising from Property, Professions, Trades, and Offices; and for repealing an Act passed in the Forty-fifth Year of his present Majesty, for repealing certain Parts of an Act made in the Forty-third Year of his present Majesty, for granting Contribution on the Profits arising from Property, Professions, Trades, and Offices, and to consolidate and render more effectual the Provisions for collecting the said Duties.*

## SCHEDULES TO WHICH THIS ACT REFERS.

### SCHEDULE (A.)

#### FORM OF EXTRACT OF DECREET IN AN ORDINARY ACTION FOR PAYMENT OF DEBT.

At Edinburgh, the \_\_\_\_\_ Day of \_\_\_\_\_ sitting in Judgment the  
 Lords of Council and Session, they decerned and ordained and hereby decern and ordain  
 Defender to make Payment to \_\_\_\_\_ Pursuer of the Sum  
 of \_\_\_\_\_ Sterling of Principal contained in and due by the Bond Bill or other  
 Document or Claim founded on in the Libel [*which must be shortly mentioned by Date or otherwise, as expressed in the Judgment of the Court*], or due in Manner libelled on.  
 Item, of the lawful Interest of said Sum from and since the \_\_\_\_\_ Day of \_\_\_\_\_  
 till Payment; and of the Sum of \_\_\_\_\_ of Expenses found  
 due, and of the Sum of \_\_\_\_\_ Sterling further as the Expense of extracting  
 this Decreet; and ordain Letters of Horning on a Charge of Fifteen Days, and all other  
 Execution to pass hereon in Form as effeirs. Extracted by me, One of the principal  
 Clerks of Session.

#### IN CASES OF DECREES IN ABSENCE,

The Form will be the same as in the above, with the Addition of the Words "in absence" before the Word "decerned," with such Alteration in regard to Expenses as the Circumstances of the Case may require.

### SCHEDULE (B.)

#### FORM OF DECREET OF ABSOLVITOR IN AN ORDINARY ACTION FOR PAYMENT OF DEBT.

At Edinburgh, the \_\_\_\_\_ Day of \_\_\_\_\_ sitting in Judgment the  
 Lords of Council and Session, they assolizied and hereby assolizie simpliciter  
 Defender from the whole Conclusions of the Summons and Action insisted in  
 before the said Lords at the Instance of \_\_\_\_\_ against the said Defender for

Payment of the Sum of Sterling, alleged to have been due by the Defender to the Pursuer by the Bond Bill or other Document of Debt or Claim mentioned in the Libel [*which it will be necessary to refer to by Date or Description*], and decerned and ordained, and hereby decern and ordain the said Pursuer to make Payment to the said Defender of the Sum of [*here insert the Sum of Expenses, if such are found due by the Judgment of the Court*]. Item, of the Sum of farther as the Expense of extracting this Decreet; and ordain Letters of Horning on Fifteen Days Charge, and all other Execution to pass hereon in Form as effairs. Extracted by me, One of the principal Clerks of Session.

## SCHEDULE (C.)

## FORM OF EXTRACT IN AN ADVOCATION WHERE THE CAUSE IS REMITTED SIMPLICITER.

At Edinburgh, the Day of sitting in Judgment the Lords of Council and Session in the Process of Advocation insisted in at the Instance of against complaining of an Interlocutor of the Sheriff-Depute of dated the Day of last, the said Lords remitted and hereby remit the said Action and Cause simpliciter to the said Sheriff-Depute, to the end he may proceed and administer Justice therein to the final Issue and Conclusion thereof; and further decerned and ordained, and hereby decern and ordain the said Advocate to make Payment to the said Defender, of the Sum of Sterling of Expenses, and of the Sum of as the Expense of this Act and Remit and Decreet; and ordain Letters of Horning on Fifteen Days Charge and all other Execution to pass hereon at the Instance of the said Defender against the said Advocate for Payment of these Sums accordingly in Form as effairs. Extracted by me, One of the principal Clerks of Session.

## IN CASES OF A REMIT WITH INSTRUCTIONS,

The Form will be similar to the above, but reciting the Instructions.

## SCHEDULE (D.)

## FORM OF EXTRACT IN A SUSPENSION WHERE THE LETTERS ARE FOUND ORDERLY PROCEEDED.

At Edinburgh, the Day of sitting in Judgment the Lords of Council and Session, in the Process of Suspension insisted in at the Instance of against complaining of having been charged or threatened to be charged to make Payment to the said of the Sum of Sterling of Principal contained in and due by the Bond Bill or other Document mentioned in the Letters [*which must be shortly described by Title and Date*], and of the Interest thereof, the said Lords found and hereby find the Letters and Charge to be orderly proceeded, and decerned and ordained, and hereby decern and ordain the same to be put to further Execution, and further decern and ordain the said Suspender and his Cautioner in the said Suspension, conjunctly and severally, to make Payment to the said Charger of the aforesaid Sum of Sterling of Principal; Item, of the lawful Interest thereof since the Day of when the same fell due, till Payment, and of the Sum of Sterling of Expenses found due by the said Suspender to the said Charger for wrongous Suspending; and of the Sum of further as the Expense of extracting this Decreet, besides the Sum of as the Expense of Extracting the said Bond of Cautionry, and ordain Letters of Horning on a Charge of Fifteen Days and all other Execution to pass hereon, and on the Extract of the Suspender's Bond of Cautionry against the Suspender and his Cautioner, conjunctly and severally, in Form as effairs. Extracted by me, One of the principal Clerks of Session.

**SCHEDULE (E.)**

**FORM OF EXTRACT IN A SUSPENSION WHEN THE LETTERS ARE SUSPENDED SIMPLICITER.**

At Edinburgh, the Day of sitting in Judgment the Lords of Council and Session in the Suspension insisted in at the Instance of against complaining of being charged or threatened to be charged to make Payment to the said [the Nature of the Charge to be shortly stated] the said Lords suspended the said Letters and Charge simpliciter, found the said Charger liable in the Sum of of Expenses, and decerned and ordained, and hereby decern and ordain, the said Charger, to make Payment to the said Suspender, of the said Sum of of Expenses, and of the Sum of as the Expense of extracting the Decreet, and ordain Letters of Horning on Fifteen Days Charge and all other Execution to pass hereon in Form as effairs. Extracted by me, One of the principal Clerks of Session.

**SCHEDULE (F.)**

### **Actions of RANKING and SALE.**

### FORM OF ACT AND COMMISSION IN RANKING AND SALE.

At Edinburgh, the Day of upon a Summons and  
 Action of Ranking and Sale insisted in and depending before the Lords of Council and  
 Session, at the Instance of against and the following  
 Persons his Creditors, videlicet, *[here enumerate the Names of the different Defenders  
 cited in the Action either edictally or otherwise]*, concluding that the following heritable  
 Subjects belonging to the said common Debtor, videlicet, All and Whole the Lands of,  
 etc. *[here describe the several Subjects contained in the Summons]* ought and should be  
 sold under Authority of the said Lords, and the Rents and Prices thereof divided among  
 his Creditors according to their several Rights of Preference thereon: after some Pro-  
 cedure had taken place in the Action before the Lord as Ordinary  
 thereto, the said Lords of Council and Session, of the Date hereof, sustained and hereby  
 sustain the Libel, and allowed and hereby allow the Pursuer to prove pro ut de jure the  
 yearly Rent of the Lands and others before specified, what the same have paid, do or  
 may pay yearly, allowed and hereby allow the Defenders a conjunct Probation there-  
 anent; and for that End gave and granted and hereby give and grant full Power,  
 Warrant, and Commission, etc. *[agreeably to the Terms of the Interlocutor of the Court,  
 which must be engrossed]*. Extracted by me, One of the principal Clerks of Session.

**SCHEDULE (G.)**

### FORM OF EXTRACT OF DECREET OF SALE.

At Edinburgh, the Day of upon a Summons and  
Action of Ranking and Sale raised and insisted in before the Lords of Council and  
Session at the Instance of against and the following  
Persons as his Creditors, etc. [*here enumerate the several Defenders who appear to be  
cited to the Action, either edictally or otherwise*], concluding that the several heritable  
Subjects belonging to the said as specified in the Libel, and after  
described, ought and should be sold under Authority of the Court, and adjudged,  
decerned, and declared to belong to the Person or Persons who should offer most for  
the same at the Roup thereof : after a Proof had been adduced of the Rental and Value  
of the said Subjects, and that a Roup of the same had taken place, the Lords of Council  
and Session, upon Report of the Lord found and hereby find the Roup  
and Sale of the said Subjects carried on before his Lordship on the  
Day of last, orderly proceeded, and that having  
ffered for the said Subjects the Sum of Sterling, was the last

and highest Offerer for the same at the said Roup, and was accordingly preferred to the Purchase thereof by the Lord Reporter agreeably to the Articles of Roup, and has accordingly found Caution in Terms of the said Articles; therefore the said Lords sold, adjudged, decerned, and declared, and hereby sell, adjudge, decern, and declare All and Whole, etc. [*here the Lands are to be specially enumerated*] to pertain and belong to the said his Heirs and Assignees, heritably and irredeemably, upon Payment or Consignation of the aforesaid Price, with the annual Rent thereof in the Terms mentioned in the Articles of Roup and relative Bond granted therefor [*here the Remainder of the Interlocutor of the Court must be taken in*], and ordain Letters of Horning to pass and be direct hereon against the Superior of the said Subjects for infetting the Purchaser and his Foresaids therein in Form as effeirs. Extracted by me, One of the principal Clerks of Session.

## SCHEDULE (H.)

## FORM OF EXTRACT OF DECRET OF RANKING.

At Edinburgh, the Day of in the Summons and Action of Ranking and Sale, raised and insisted in before the Lords of Council and Session, at the Instance of against and the following Persons his Creditors, videlicet, [*here enumerate the Names of the different Creditors cited*], concluding that the following heritable Subjects belonging to the said videlicet, All and Whole, etc. [*here describe the Subjects*] ought and should be sold under Authority of the Court, in Terms of the several Acts of Parliament and Acts of Sederunt libelled on, and the Rents and Prices thereof divided among his Creditors, according to their several Rights and Diligences affecting the same, the following Grounds of Debt and Diligences thereon were produced on the Part of the respective Creditors after named, videlicet, [*here take in shortly the Grounds of Debt, etc., produced by the Creditors, conform to the Inventories thereof given in by them; then add*] and after some Procedure had been taken in the Action before the Lord as Ordinary thereto, the said Lords of Council and Session, of the Date hereof, ranked and preferred, and hereby rank and prefer, etc. [*here the Words of the Interlocutor of Ranking to be verbatim engrossed*], and ordain all Letters and Execution necessary to pass and be direct hereon, in Form as effeirs. Extracted by me, One of the principal Clerks of Session.

## SCHEDULE (I.)

## FORM OF EXTRACT OF DECRET OF DIVISION.

At Edinburgh, the Day of in the Process of Ranking and Sale, raised and insisted in before the Lords of Council and Session, at the Instance of against and the following Persons his Creditors, videlicet, [*here recite the names of the Creditors cited*], concluding that the Lands and Estates, etc. [*here describe the Subjects shortly*] belonging to the said should be sold under Authority of the Court, and the Rents and Prices thereof divided among his Creditors, conform to their respective Rights and Diligence affecting the same, after the aforesaid Subjects had been sold, and a Decreet ranking the Creditors pronounced and extracted: the said Lords of Council and Session, of the Date hereof, approved and hereby approve of the Scheme of Division of the Rents and Prices of the said Subjects made up and reported by Accountant in Edinburgh; and in Terms thereof decerned and ordained, and hereby decern and ordain, the Purchaser of the said Subjects, to make Payment of the Sum due by him, extending of Principal and Interest at the Term of to the Sum of Sterling, in Manner following, videlicet, [*here take in that Part of the Accountant's Scheme which allocates the Price, and in case the Factor has any Balance in his Hands, the Allocation of that Balance must also be inserted*], and ordain Letters of Horning on Fifteen Days Charge, and all other Execution necessary to pass and be direct hereon in Form as effeirs. Extracted by me, One of the principal Clerks of Session.

## SCHEDULE,

## DUES OF COURT.

*Summonses.*

|                                                                                                                                 | £ | s. | d. |
|---------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| In lieu of the present Fee or Dues of Court, on tabling of Summonses, there shall be paid on every Summons the Sum of . . . . . | 1 | 0  | 0  |

*Suspensions and Advocations,*

|                                                  |   |   |   |
|--------------------------------------------------|---|---|---|
| To pay the like Fee of One Pound each, . . . . . | 1 | 0 | 0 |
|--------------------------------------------------|---|---|---|

*Original or Summary Applications by Petition, etc.*

|                                                                                                                                                                                                                                                                   |   |   |   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Original Petitions, and Petitions and Complaints, or any other summary Application, by which a Cause comes in the First Instance before the Outer or Inner House, shall pay, in lieu of the present Fee of Four Shillings and Tenpence, One Pound each, . . . . . | 1 | 0 | 0 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|

*Defences.*

|                                                                                                                                                                                                |   |   |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| All Defences including and comprehending the First Paper or Step of Process, given in for the Charger in a Suspension, or for the Defender, called in an Advocacion, One Pound each, . . . . . | 1 | 0 | 0 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|

*Answers to Summary Applications.*

|                                                                |   |   |   |
|----------------------------------------------------------------|---|---|---|
| All Answers in summary Applications, each One Pound, . . . . . | 1 | 0 | 0 |
|----------------------------------------------------------------|---|---|---|

*Condescendences and Answers in Outer or Inner House.*

|                                                                             |   |    |   |
|-----------------------------------------------------------------------------|---|----|---|
| Condescendences, each Ten Shillings, . . . . .                              | 0 | 10 | 0 |
| Answers to ditto, or Counter Condescendences, each Ten Shillings, . . . . . | 0 | 10 | 0 |

*Amendments of Libel, or additional Defences or Supplementary Condescendences or Answers.*

|                            |   |   |   |
|----------------------------|---|---|---|
| Each, One Pound, . . . . . | 1 | 0 | 0 |
|----------------------------|---|---|---|

*Representations and Answers.*

|                                                      |   |    |   |
|------------------------------------------------------|---|----|---|
| Representations to pay Ten Shillings each, . . . . . | 0 | 10 | 0 |
| Answers to pay Five Shillings each, . . . . .        | 0 | 5  | 0 |

*Minutes.*

|                                                                                                                                |   |   |   |
|--------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Each Minute ordered by the Lord Ordinary or Court to be given in in the Inner or Outer House, to pay Five Shillings, . . . . . | 0 | 5 | 0 |
| Every Answer, Five Shillings, . . . . .                                                                                        | 0 | 5 | 0 |

*Memorials or Informations.*

|                                                                                                     |   |    |   |
|-----------------------------------------------------------------------------------------------------|---|----|---|
| Memorials or Informations, either in the Inner or Outer House, to pay Ten Shillings each, . . . . . | 0 | 10 | 0 |
|-----------------------------------------------------------------------------------------------------|---|----|---|

*Petitions, Reclaiming or Incidental, and Answers.*

|                                                                                                                                                                                   |   |    |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|
| All Petitions and Answers (other than original or summary Applications as above), in lieu of the present Fee of Four Shillings and Tenpence, to pay Ten Shillings each, . . . . . | 0 | 10 | 0 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|



*Prepared States.*

|                                                                                                                   | £ | s. | d. |
|-------------------------------------------------------------------------------------------------------------------|---|----|----|
| Each Party, in place of the present Fee on Hearings of Nine Shillings and Eightpence, to pay One Pound, . . . . . | 1 | 0  | 0  |

*Replies and Duplies.*

|                                                                                   |   |   |   |
|-----------------------------------------------------------------------------------|---|---|---|
| Replies and Duplies in the Inner or Outer House, to pay each One Pound, . . . . . | 1 | 0 | 0 |
|-----------------------------------------------------------------------------------|---|---|---|

*Notes.*

|                                                                                     |   |   |   |
|-------------------------------------------------------------------------------------|---|---|---|
| All Notes to the Lord President, printed or written, Five Shillings each, . . . . . | 0 | 5 | 0 |
|-------------------------------------------------------------------------------------|---|---|---|

*Depositions of Witnesses or of Parties.*

|                                                                                                                                                                                      |   |   |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Depositions of Witnesses or of Parties, whether in Presence of the Court or on Commission, in lieu of the present Fee to the Clerks of Session, to pay each Two Shillings, . . . . . | 0 | 2 | 0 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|

|                                                                                                                                                                              |   |    |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|
| Interests in Processes of Multiplepointings, Adjudications and Rankings and Sale; also Writings given in to satisfy Productions in Reductions, each Ten Shillings, . . . . . | 0 | 10 | 0 |
| All Interests where the Sum claimed is under Ten Pounds, to continue as at present, to pay no Fee.                                                                           |   |    |   |

*Abridged Extracts.*

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |    |   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|---|
| The Extracts of Decrets in foro, each One Pound One Shilling, . . . . .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 1 | 1  | 0 |
| Extracts of Decrets in Absence, Acts, Abbreviates of Adjudication, Diligences, and Protestations, Ten Shillings and Sixpence each, . . . . .                                                                                                                                                                                                                                                                                                                                                                                                                          | 0 | 10 | 6 |
| The Fees of the Lord Clerk Register on Summonses, and on Acts and Decrets, as also those of the Keeper of the Minute Book; and of the Macers on Acts and Decrets, and the Fees of the Macers on the Depositions of Witnesses and of Parties; and those of the Housekeepers on Abbreviates of Adjudications, and on Interests in Adjudications, are to remain as at present; and the Clerk's Assistant who prepares the Extracts is likewise to be allowed to charge the ordinary Rate of copying per Sheet allowed to Agents before the Court of Session at the Time. |   |    |   |
| Certified Copy of Proceedings for Appeal, Five Pounds each, . . . . .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 5 | 0  | 0 |
| Cross Appeals to pay the same Sum each, . . . . .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 5 | 0  | 0 |

None of the above Dues to attach upon Processes on the Poors Roll.

There is at present payable upon Extracts of Deeds recorded in the Books of Council and Session, which are subscribed by the principal Clerks of Session as Deputies empowered to that Effect by the Lord Clerk Register, the Sums following, viz. :—

|                                                        | £  | s. | d.                             |
|--------------------------------------------------------|----|----|--------------------------------|
| A Protest, . . . . .                                   | 0  | 3  | 5                              |
| Of which there is paid to the Lord Register, . . . . . | £0 | 1  | 1 <sup>4</sup> / <sub>12</sub> |
| To the Clerks, . . . . .                               | 0  | 1  | 1 <sup>4</sup> / <sub>12</sub> |
| To the Keepers, . . . . .                              | 0  | 0  | 4 <sup>8</sup> / <sub>12</sub> |
| And for Writing, Recording, Paper, etc., . . . . .     | 0  | 0  | 9 <sup>8</sup> / <sub>12</sub> |
|                                                        |    | 0  | 3                              |
|                                                        |    | 5  |                                |
| A Deed (First Sheet), . . . . .                        | 0  | 3  | 8                              |
| Of which the Lord Register draws . . . . .             | £0 | 1  | 1 <sup>4</sup> / <sub>12</sub> |
| The Clerks draw . . . . .                              | 0  | 1  | 1 <sup>4</sup> / <sub>12</sub> |
| The Keepers, . . . . .                                 | 0  | 0  | 4 <sup>8</sup> / <sub>12</sub> |
| Writing, Recording, Paper, etc., . . . . .             | 0  | 1  | 0 <sup>4</sup> / <sub>12</sub> |
|                                                        |    | 0  | 3                              |
|                                                        |    | 8  |                                |

|                                             | £  | s. | d.  |
|---------------------------------------------|----|----|-----|
| Second Sheet pays . . . . .                 |    | 0  | 2 4 |
| Of which the Clerks draw . . . . .          | £0 | 0  | 10  |
| The Keepers, . . . . .                      | 0  | 0  | 8   |
| Writing, Recording, and Paper, . . . . .    | 0  | 0  | 10  |
|                                             |    | 0  | 2 4 |
| Third, and each other Sheet, pays . . . . . |    | 0  | 2 4 |
| Of which the Keepers draw . . . . .         | £0 | 1  | 6   |
| Writing, Recording, and Paper, . . . . .    | 0  | 0  | 10  |
|                                             |    | 0  | 2 4 |

The above Registration Fees, in so far as they go to the Lord Clerk Register and Keepers of Registers, etc., shall continue on their present Footing; but in so far as they go to the principal Clerks of Session, and form a Part of the General Fund which they divide among themselves, shall be drawn by the Collector, and paid into the Fee Fund, out of which the Allowances or Salaries to the principal and Depute Clerks of Session, etc., are to be paid in future.

## SCHEDULE.

## RATE OF FEES PAYABLE TO THE AUDITOR OF COURT.

|                                                                                                      | £ | s. | d. |
|------------------------------------------------------------------------------------------------------|---|----|----|
| When the Amount of the Account to be taxed is under Ten Pounds, the Auditor's Fee to be . . . . .    | 0 | 7  | 6  |
| Where the Account amounts to Ten Pounds but is under Twenty Pounds, . . . . .                        | 0 | 10 | 6  |
| Where the Account amounts to Twenty Pounds but is under Fifty Pounds, . . . . .                      | 0 | 15 | 0  |
| Where the Account amounts to Fifty Pounds but is under One hundred Pounds, . . . . .                 | 1 | 1  | 0  |
| Where the Account amounts to One hundred Pounds but is under One hundred and fifty Pounds, . . . . . | 1 | 11 | 6  |
| Where the Account amounts to One hundred and fifty Pounds but is under Two hundred Pounds, . . . . . | 2 | 2  | 0  |
| Where the Account amounts to Two hundred Pounds but is under Three hundred Pounds, . . . . .         | 3 | 3  | 0  |
| Where the Account amounts to Three hundred Pounds but is under Five hundred Pounds, . . . . .        | 4 | 4  | 0  |
| Where the Account amounts to Five hundred Pounds and upwards, . . . . .                              | 5 | 5  | 0  |

## SCHEDULE.

## FEES OF ORDINARY SIGNET LETTERS AND OF SERVICES BEFORE THE MACERS.

*Fees of Ordinary Signet Letters.*

|                                                                                                                  |   |    |   |
|------------------------------------------------------------------------------------------------------------------|---|----|---|
| Letters of Horning and Poining, Caption, Arrestment, Supplement, and Law Burrows :                               |   |    |   |
| First Sheet, estimated as the legal Sheet, is by this Act . . . . .                                              | 0 | 5  | 0 |
| Every other Sheet so estimated, . . . . .                                                                        | 0 | 2  | 0 |
| Inhibitions, Hornings against Superiors, Letters of general and special Charges, and Summonses of Adjudication : |   |    |   |
| First Sheet, . . . . .                                                                                           | 0 | 10 | 0 |
| Second Sheet, . . . . .                                                                                          | 0 | 6  | 0 |
| All other Summonses passing the Signet :                                                                         |   |    |   |
| First Sheet, . . . . .                                                                                           | 0 | 6  | 0 |
| Second Sheet, . . . . .                                                                                          | 0 | 4  | 0 |

*Bills of Suspension and of Advocacy, when drawn by a Writer to the Signet.*

|                                                                                                        |   |   |   |
|--------------------------------------------------------------------------------------------------------|---|---|---|
| First Sheet, . . . . .                                                                                 | 0 | 6 | 0 |
| Every other Sheet, . . . . .                                                                           | 0 | 4 | 0 |
| Letters of Suspensions and Advocations, when expedited by the Writer to the Signet who drew the Bill : |   |   |   |
| For the formal part, per Sheet, . . . . .                                                              | 0 | 4 | 0 |
| For every other Sheet, for writing and expediting the Letters, . . . . .                               | 0 | 1 | 0 |

|                                           | £ | s. | d. |
|-------------------------------------------|---|----|----|
| When the Bill is drawn by another Person, |   |    |    |
| For the formal part, per Sheet,           | 0 | 5  | 0  |
| For every other Sheet,                    | 0 | 2  | 0  |

*Fees of Service before the Macers to the Writer to the Signet, as Clerk to the Service, without prejudice to other proper Charges relative to making up the Title.*

|                                                                                              | £  | s. | d. |
|----------------------------------------------------------------------------------------------|----|----|----|
| For the Bill of Commission, Acts and Minutes of Court Commissions to proclaim Brieves, etc., |    |    |    |
| First Sheet,                                                                                 | 0  | 6  | 0  |
| Every other Sheet,                                                                           | 0  | 4  | 0  |
| For Claim,                                                                                   |    |    |    |
| First Sheet,                                                                                 | 0  | 10 | 0  |
| Every other Sheet,                                                                           | 0  | 6  | 0  |
| For the Retour,                                                                              |    |    |    |
| First Sheet,                                                                                 | 1  | 0  | 0  |
| Every other Sheet,                                                                           | 0  | 12 | 0  |
| As Clerk to the Service,                                                                     |    |    |    |
| When the Lands are below Four hundred Pounds valued Rent,                                    | 4  | 4  | 0  |
| Amounting to Four hundred Pounds, and below Seven hundred Pounds,                            | 5  | 5  | 0  |
| Seven hundred Pounds, and below One thousand Pounds,                                         | 7  | 7  | 0  |
| One thousand Pounds, and below One thousand five hundred Pounds,                             | 8  | 8  | 0  |
| One thousand five hundred Pounds and upwards,                                                | 10 | 10 | 0  |

## SCHEDULE.

## SPECIFIC COMPENSATIONS.

|                                                                                                                                                                                                                                                 |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| To each of the principal Clerks of Session now in Office, in addition to the Salary of One thousand Pounds in the foregoing Act provided, during the respective Lives of the said Clerks upon their severally becoming entitled to such Salary, | £100 per ann. |
| To Thomas Mason, Extractor, besides the Salary of Two hundred Pounds in the foregoing Act provided during his Life,                                                                                                                             | 33 per ann.   |
| To Louis de Maria, Extractor, besides the like Salary, during his Life,                                                                                                                                                                         | 30 per ann.   |
| To William Carmichael, Extractor, besides the like Salary, during his Life,                                                                                                                                                                     | 50 per ann.   |
| To John Elder, Extractor, besides the like Salary, during his Life,                                                                                                                                                                             | 328 per ann.  |
| To Adam Wilson, Extractor, besides the like Salary, during his Life,                                                                                                                                                                            | 175 per ann.  |
| To Joseph Johnson, Extractor, besides the like Salary, during his Life,                                                                                                                                                                         | 5 per ann.    |

To the following Extractors, during their respectives Lives :

|                                                                                                                                                                              |               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Thomas Miller,                                                                                                                                                               | £310 per ann. |
| Robert Pitcairn,                                                                                                                                                             | 170 per ann.  |
| James Sibbald,                                                                                                                                                               | 50 per ann.   |
| David George,                                                                                                                                                                | 26 per ann.   |
| James Shiels,                                                                                                                                                                | 44 per ann.   |
| Alexander Pitcairn,                                                                                                                                                          | 20 per ann.   |
| John Alexander,                                                                                                                                                              | 100 per ann.  |
| Thomas Scott,                                                                                                                                                                | 130 per ann.  |
| John Chalmers,                                                                                                                                                               | 120 per ann.  |
| William Smith,                                                                                                                                                               | 110 per ann.  |
| Walter Lockhart,                                                                                                                                                             | 20 per ann.   |
| To the Collector of Clerks' Dues now in Office, and his Deputes during their respective Lives, according to the Proportions in which they now respectively receive the same, | 100 per ann.  |

*Bill-Chamber  
Rotation.*

## 53° GEORGII III. REGIS.

## CAP. LXIV.

[Lords Ordinary,  
1813.]

*An Act for the better Regulation of the Court of Session in  
Scotland.*—[3d June 1813.]

50 G. 3, c. 112.

WHEREAS an Act was passed in the Fiftieth Year of the Reign of his present Majesty, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*, whereby it was among other Things enacted, that the Three junior Ordinary Judges of the First Division of the Court of Session, and the Two junior Ordinary Judges of the Second Division, should be relieved from Attendance in the Inner House, and should from and after the passing of the said Act not sit therein, but should sit as Lords Ordinary in the Outer House, to perform the Business of the Outer House; but by which Act it was provided, that the then junior Judges who might be affected by the said Regulation, should not be bound by it except with their own Consent, and therefore that the Course of Rotation should remain as it was at the passing of the said Act, until, either by the Consent of the said Judges, or by new Appointment of Judges, the requisite Number could be obtained for carrying the said System into Execution: And whereas by such new Appointments, such requisite Number is soon likely to be obtained, and it is expedient to make some further Regulations in that Behalf: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act the Three junior Ordinary Judges of the First Division of the Court of Session, and the Two junior Ordinary Judges of the Second Division for the Time being, shall officiate as permanent Lords Ordinary, in the Manner hereinafter directed.

What Judges shall officiate as Permanent Lords Ordinary.

*Am. by* 6 G. 4, c. 120, § 1; 1 W. 4, c. 69, § 20; 1 & 2 V., c. 118, § 1, 4.

What Judge shall officiate as Lord Ordinary on the Bills in Vacation.

*Am. by* 2 & 3 V., c. 88, § 7.

*See* 1 & 2 G. 4, c. 88, § 3, 4.

II. And be it enacted, That the junior or last appointed Judge for the Time being, of the said Three junior Ordinary Judges of the First Division, shall in Time of Session officiate exclusively as Lord Ordinary on the Bills, and perform the whole Business of the Bill Chamber in Time of Session: Provided nevertheless, that during the Spring, Autumn, and Christmas Vacations, the whole Thirteen

Ordinary Lords of Session shall continue to officiate as Ordinaries on the Bills, by Rotation each Week, as at present; anything herein or in the Acts herein recited to the contrary notwithstanding.

*Junior Lord Ordinary.*

III. And be it further enacted, That all Remits made from the Lords of Council and Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, to a Lord Ordinary, shall be made to the said last appointed Judge of the said Three junior Ordinary Judges of the First Division; and also all Remits by either Division of the Court of Session to a Lord Ordinary, in Matters relating to Sequestration or Bankruptcy, and in such other Matters as to either Division shall seem proper, shall be made to the said last appointed Judge of the said Three junior Ordinary Judges of the said First Division; and such last appointed Judge shall officiate in the Outer House and Bill Chamber, according to the Rules and Forms of Proceedings at present established, or which shall be established, by any Act or Acts of Sederunt of the whole Court of Session, or a Quorum thereof.

All Remits from the Court of Teinds, and relative to Matters in Sequestrations, or other Matters, shall be made to the Lord Ordinary.

*Am. by 1 & 2 V., c. 118, § 1, 2.*

*See 20 & 21 V., c. 56.*

IV. Provided always, and be it enacted, That in case of the Death, Resignation, Sickness, or necessary Absence of the said last appointed or junior Ordinary Judge of the said First Division, it shall be competent to the whole Court of Session, or a Quorum thereof, to appoint the said other Four permanent Ordinaries to officiate, each Week by Rotation, as Ordinaries in the Bill Chamber and in Teind Processes, and other Matters above mentioned, until the said junior Judge shall again officiate, or another Judge be appointed in his stead.

Provision in Case of the Death, Resignation, Sickness, or Absence of the junior Judge.

*Am. by 1 & 2 V., c. 118, § 1.*

V. And be it enacted, That in all Cases after the Commencement of this Act, where any Application in the Bill Chamber shall be made to the said last appointed or junior Ordinary Judge of the First Division, the Party complaining or making the Application, shall notify to such Judge the Division of the Court to which such Application shall be understood to belong; and it shall be competent to either Party who shall be dissatisfied with any Interlocutor pronounced by such Lord Ordinary, to reclaim to such Division so notified; and in Cases of Remits to such last appointed or junior Judge of the First Division, it shall only be competent to reclaim to that Division of the Court by which the Remit shall have been made; and in Remits from the Lords of Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, it shall be competent to reclaim to the said Lords as such Commissioners; and in Cases where such last appointed or junior Judge shall think fit to take any Cause to report, such Report shall be made to the

Provision for Reclaiming and for Report.

*See Book III., Court of Teinds.*

*Outer House  
Procedure.*

Lords Ordinary  
in the Outer House  
to be appointed in  
a certain Manner.

*Supra*, § 1.

Where such Four  
permanent Ordina-  
ries shall sit.

*Supra*, § 1.

Processes at pre-  
sent depending  
before other  
Lords Ordinary  
to be brought to  
a Conclusion by  
them.

Division or Court to whom, in the Event of reclaiming, the Party or Parties is or are hereby directed and appointed to reclaim.

VI. And be it further enacted, That the Two other of the said Three junior Ordinary Judges of the said First Division, and the said Two junior Ordinary Judges of the Second Division, shall officiate as permanent Lords Ordinary in Manner hereinafter directed; that is to say, One of the said Four Ordinary junior Judges shall officiate each Week in Time of Session, in the Outer House, for hearing and determining Causes in the Rolls of Suspensions, Advocations, Regulations, and ordinary Actions; and for that Purpose the said Four Judges shall sit in the Outer House weekly by Rotation in such Manner as that a Judge or Ordinary of the First Division shall officiate the First Week, a Judge or Ordinary of the Second Division the Second Week, a Judge or Ordinary of the First Division the Third Week, and a Judge or Ordinary of the Second Division the Fourth Week; and so alternately thereafter, a Judge of the one Division following a Judge of the other, as Ordinary in the Outer House, for hearing Causes in the Rolls of Suspensions, Advocations, Regulations, and ordinary Actions: Provided always, that in the Event of such Arrangement being at any Time prevented from taking place by the Death, Resignation, Sickness, or Absence of any of the said permanent Ordinaries, it shall be competent to the whole Court of Session, or a Quorum thereof, to make suitable Regulations for the Dispatch of Business during such Interruption of the ordinary Rotation.

VII. And be it enacted, That such Four permanent Ordinaries, when officiating each Week as aforesaid, in hearing and determining Causes in the Rolls of Suspensions, Advocations, Regulations, and ordinary Actions, and when officiating at other Times in carrying on the Processes depending before them, shall sit and officiate in the Outer House, according to the Rules and Forms of Proceeding at present established with respect to Lords Ordinary, or which shall be established by any Act or Acts of Sederunt of the whole Court of Session or Quorum thereof.

VIII. Provided always, and be it enacted, That all Processes and Proceedings at present depending before any of the Thirteen Lords Ordinary belonging to either Division of the Court of Session, shall be carried on and brought to a Conclusion before such Lord Ordinary, in the same Manner as if there had been no Appointment of permanent Ordinaries; for which Purpose each of such Lords Ordinary shall sit and officiate in the Outer House, in such Manner and at such Time and Times as shall be directed by any

Act or Acts of Sederunt of the whole Court of Session or Quorum thereof.

IX. And be it further enacted, That it shall be competent for either Division of the Court, or for any Ordinary, to remit any new Process to any of such Thirteen Lord Ordinaries, ob Contingentiam, of any other Process already depending before him at the passing of this Act.

X. And be it enacted, That in the Event of the Death or Resignation of any of the said Ordinary Judges, other than the said Five permanent Ordinaries, it shall be competent to the whole Court of Session or Quorum thereof, to remit, by an Act of Sederunt or otherwise, the Processes then depending before any such Ordinary Judge to any or such of the permanent Ordinaries belonging to the same Division as to the said Court or Quorum thereof shall appear to be proper, and that it shall be competent to make such Remit without any Petition or Motion to that Effect.

XI. And be it enacted, That in the Event of the Death or Resignation of the said last appointed or junior Judge of the said First Division for the Time being, or in the Event of his ceasing to be such last appointed or junior Judge of the said First Division, it shall be competent to the whole Court of Session or Quorum thereof, in like Manner to remit, by an Act of Sederunt or otherwise, the Processes then depending before such last appointed or junior Judge to the Judge who shall be appointed such last or junior Judge of the said First Division, and that without any Petition or Motion for that Purpose.

XII. And be it enacted, That in the Event of the Death or Resignation or Removal into the Inner House of any of the said Four permanent Ordinaries, it shall be competent to the whole Court or Quorum thereof, in like Manner to remit the Processes then depending before such permanent Ordinary to One of the said Four permanent Ordinaries belonging to the same Division, and that without any Petition or Motion for that Purpose.

XIII. And whereas by an Act passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords*, it is enacted, That in case there should be an Equality of Voices in either Division, the Cause or Matter should remain for subsequent Discussion and Decision; and in case, upon such subsequent Discussion and Decision, there should be again an Equality of Voices, the Judges of the said Division should call in One of the Lords Ordinary of the same Division from the Outer House, in the Order of their Seniority,

*Remit of  
Processes.*

Remits ob Contingentiam.  
*Ext.* 48 G. 3, c. 151,  
§ 9. See 50 G. 3,  
c. 112, § 36; 20 &  
21 V., c. 56, § 7, 8.

In case of Death, etc., of Ordinary Judges (other than the Five permanent Ordinaries), Court of Session may remit Processes.

In case of Death, etc., of junior Judge of First Division, Court of Session may also remit Processes.

In case of Death of any of the permanent Ordinaries, the Court may remit Processes depending, etc.

48 G. 3, c. 151.

*Quorum and  
Advising.*

Further Regulation in case of Equality of Voices in either Division.  
*Am.* 48 G. 3, c. 151, § 8. *Am. by* 1 & 2 G. 4, c. 38, § 3.

*Modern Rule.*  
6 G. 4, c. 120, § 23;  
13 & 14 V., c. 36,  
§ 35.

Provision in case either Division shall be reduced below a Quorum.

Further Regulation in Cases where Questions in Writing shall be stated for the Opinion of the Judges.

*Am.* 48 G. 3, c. 151, § 10.

*Re-enacted by* 6 G. 4, c. 120, § 24.

*See* 13 & 14 V., c. 36, § 35.

Provision as to an equal Number of Lords of Justiciary in either Division, repealed.

*Rep.* 48 G. 3, c. 151, § 8.

as Judges to be present at the Discussion, and to vote in such Case; be it enacted, That in such last mentioned Case, the Judges of the said First Division shall call in One of the said Three junior Ordinary Judges in Rotation, beginning with the senior of the said Three Judges; and the Judges of the said Second Division shall call in One of the said Two junior Ordinary Judges in Rotation, beginning with the senior of the said Two Ordinary Judges, to be present at the Discussion, and to vote in such Case.

XIV. And whereas it may happen, that by reason of Death, Resignation, Sickness, Declinature, or unavoidable Absence, the Number of either Division may be reduced to less than a Quorum of Three; be it enacted, That in any such Case it shall be competent for such Division to call in One or more of the permanent Ordinaries of such Division in Rotation, beginning with the senior; which Ordinary or Ordinaries, so called in, shall vote in such Case, as if he or they were Members of the Inner House of such Division.

XV. And whereas it is by the said last recited Act enacted, That it should be competent to the Judges of either Division, or the Quorum thereof, in any Cases which should appear to them to be Cases of Importance and Difficulty, to state Questions of Law in Writing on such Cases, and to require the Opinions of the Judges of the other Division to be given thereupon, and that such Judges should be bound to communicate their Opinion thereupon, either as a collective Body, or as individual Judges: And whereas it is expedient in such Cases, that the Opinions of the said Three junior Ordinary Judges of the First Division, and of the said Two junior Ordinary Judges of the Second Division, should also be required and communicated; be it therefore enacted, That in all Cases where Questions of Law shall be so stated in Writing, it shall be competent to the Judges of either Division, or the Quorum thereof, to require the Opinions of the said Five permanent Ordinaries, as well as the Opinions of the Judges of the Inner House of the other Division; and the said Five permanent Ordinaries, and the Judges of the Inner House of the other Division, shall be bound to communicate their Opinions thereupon.

XVI. And whereas by the said last recited Act it is enacted, That in each of the said Divisions there should be an equal Number of the Judges of the Court of Justiciary, including the Lord Justice Clerk: And whereas, by reason of the Regulations prescribed by this Act, the Circumstances in which such Provision was applicable no longer exist; be it therefore enacted, That the said Provision shall be and the same is hereby repealed.



XVII. And whereas a very great Number of Bills, commonly called Plack Bills, are daily presented at the Bill Chamber, which Bills, after being endorsed by the Clerk of the Bills, in token of their being properly vouched by the requisite Documents presented to him for Examination, do now require the Subscription of the Lord Ordinary on the Bills, whereby much Trouble and Waste of Time is occasioned both to the Judges and Agents; be it therefore enacted, That from and after the passing of this Act, the Endorsation of the Clerk of the Bills officiating for the Time, on such Bills usually called Plack Bills, shall be sufficient without the Subscription of the Lord Ordinary; except in Cases where a Doubt or Difficulty shall occur to the Clerk of the Bills, which he shall report to the Lord Ordinary, whose Subscription shall then be necessary.

*Bill Chamber.*

Provision relative  
to Plack Bills.

XVIII. And be it enacted, That the said first recited Act passed in the Fiftieth Year of his present Majesty, and the said last recited Act of the Forty-eighth Year of his present Majesty, excepting in so far as the same are altered or repealed by this Act, shall remain in Force, and receive Effect, in such and the same Manner as if this Act had not been made.

Recited Acts to  
remain in Force.

## 55° GEORGII III. REGIS.

### CAP. XLII.

*An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes.—[2d May 1815.]*

[Jury Trials,  
1815.]

**WHEREAS** Trial by Jury in Civil Causes would be attended with beneficial Effects to the Administration of Justice in that Part of the United Kingdom of *Great Britain and Ireland* called *Scotland*; but it is expedient, that such Trials for a Time to be limited, should in the First Instance be confined to Issues directed by either Division of the Court of Session: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That as soon as by virtue and under the Authority of this Act his Majesty shall appoint Judges to form a Court for the Trial of Issues in Civil Causes, it shall and may be lawful for either Division of the

Court of Session  
empowered to  
direct Issues.

*Jury Procedure.*  
59 G. 3, c. 35; 6  
G. 4, c. 120; 1 W.

*Issues. New Trial.*

4, c. 69; 7 W. 4,  
c. 14; 18 & 14 V.,  
c. 36; 20 & 21 V.,  
c. 56, § 8; 17 & 18  
V., c. 59; 22 & 23  
V., c. 7.  
*A. of S.* 16 Feb.  
1841; 3 July 1823.

Lord Ordinary to  
report for this  
Purpose.

*New Form*, 13 &  
14 V., c. 36, § 38.

Provision in re-  
gard to the Court  
of Admiralty.

Interlocutor grant-  
ing or refusing  
Trial not to be  
questioned.

*Re-enacted by* 59  
G. 3, c. 35, § 15.

Issues for Repara-  
tion in pecuniary  
Damages.

*See* 13 & 14 V., c.  
36, § 49.

New Trial, how to  
be applied for.

*Ex. by* 59 G. 3, c.  
35, § 16.

*See* 6 G. 4, c. 120,  
§ 37.

*A. of S.*, 16 Feb.  
1841, § 36-39.

Court of Session, in all Cases that may be brought before them during the continuance of this Act, wherein Matters of Fact are to be proved, to order and direct, by special Interlocutor, such Issues as may appear to them expedient for the due Administration of Justice, to be sent to the said Court, that such Issues may be there tried by a Jury in Manner hereinafter directed.

II. And be it enacted by the Authority aforesaid, That in all Cases as aforesaid wherein a Lord Ordinary shall see Cause for Issues to be directed to be tried by a Jury, he shall take the Cause verbally to report to the Division of the Court to which such Ordinary belongs, so that the said Division may determine whether such Issue shall be sent to the said Court to be tried by a Jury, or shall dispose of the Cause, as in Manner and Form as at present practised.

III. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Judge of the Court of Admiralty to report in Writing to either of the Divisions of the Court of Session, the Circumstances of every Case that appears to him to be a Case in which an Issue should be directed to be tried by a Jury, in order that the Division may direct such Issue, or order the Cause to proceed in Manner and Form as at present practised.

IV. And be it further enacted by the Authority aforesaid, That it shall not be competent, either by Reclaiming Petition or Appeal to the House of Lords, to question any Interlocutor granting or refusing such Trial by Jury.

V. And be it further enacted by the Authority aforesaid, That in all Issues referred by the Court of Session to be tried by a Jury in Causes wherein the Summons concludes for Reparation by pecuniary Damages, the Jury, if they shall find a Verdict for the Pursuer, shall also assess the Damages.

VI. And be it further enacted by the Authority aforesaid, That in all Cases in which an Issue or Issues shall have been directed to be tried by a Jury, it shall be lawful and competent for the Party who is dissatisfied with the Verdict to apply to the Division of the Court of Session which directed the Issue for a new Trial, on the Ground of the Verdict being contrary to Evidence, on the Ground of Misdirection of the Judge, on the Ground of the undue Admission or Rejection of Evidence, on the Ground of Ex-

IV. Johnston, 10 August 1859, 3 M.Q. 619.

V. Morton, 15 March 1824, 8 Mur. 401.

VI. Christian, 27 Nov. 1818, 2 Mur. 51.—Scruton, 10 Dec. 1821, 3 Mur. 64.—Mackenzie, 15 Feb. 1822, 1 S. Ap. 99, 109.—Dalziel, 2 Feb. 1826, 4 Mur. 18.—Miller, 25 Oct. 1826, 4 Mur. 118.—Kingan, 3 June 1828, 4 Mur. 502.—Robertson, 3 July 1828, 4 Mur. 524; 9 S. 580.—Wallace, 19 Feb. 1836, 14 S. 541.—Mackenzie, 10 July 1838, 16 S. 1305; 1 D. 487.—Campbell, 3 June 1839, M.L. and Rob. 887.—Whitehaven and Furness Ry. Co. 27 Feb. 1849, 11 D. 846.

cess of Damages, or of *res noviter veniens ad notitiam*, or for such other Cause as is essential to the Justice of the Case: Provided also, that such Interlocutor granting or refusing a new Trial shall not be subject to Review, by Reclaiming Petition or by Appeal to the House of Lords.

VII. And be it further enacted by the Authority aforesaid, That it shall be competent to the Counsel for any Party at the Trial of any Issue or Issues, to except to the Opinion and Direction of the Judge or Judges before whom the same shall be tried, either as to the Competency of Witnesses, the Admissibility of Evidence, or other Matter of Law arising at the Trial, and that on such Exception being taken, the same shall be put in Writing by the Counsel for the Party objecting, and signed by the Judge or Judges; but notwithstanding the said Exception, the Trial shall proceed, and the Jury shall give a Verdict therein for the Pursuer or Defender, and assess Damages when necessary; and after the Trial of every such Issue or Issues, the Judge who presided shall forthwith present the said Exception, with the Order or Interlocutor directing such Issue or Issues, and a Copy of the Verdict of the Jury indorsed thereon, to the Division by which the said Issue or Issues were directed, which Division shall thereupon order the said Exception to be heard in presence on or before the Fourth Sederunt Day thereafter; and in case the said Division shall allow the said Exception, they shall direct another Jury to be summoned for the Trial of the said Issue or Issues, or if the Exception shall be disallowed, the Verdict shall be final and conclusive, as hereinafter mentioned: Provided always, that it shall be competent to the Party against whom any Interlocutor shall be pronounced on the Matter of the Exception, to appeal from such Interlocutor to the House of Lords, attaching a Copy of the Exception to the Petition of Appeal, certified by One of the Clerks of Session; so as such Appeal shall be presented to the House of Lords within Fourteen Days after the Interlocutor shall have been pronounced, if Parliament shall be then sitting, or if Parliament shall not be sitting, then within Eight Days after the Commencement of the next Session of Parliament, but not afterwards; and so as the Proceedings on such Appeal do conform in all respects to the Rules and Regulations established respecting Appeals; and every such Appeal shall be appointed to be heard on or before the Fourth Cause Day after the Time limited for

*New Trial and Exceptions.*

Exception may be taken.

*Ext. by* 59 G. 3, c. 85, § 17; 1 W. 4, c. 69, § 7.

*A. of S.*, 16 Feb. 1841, § 37, 38.

*Bill of Exceptions.*

*Infra*, § 17.

*Review.*

*Am. by* 7 W. 4, c. 14; 18 & 14 V., c. 36, § 45.

*Appeal.*

*See* 48 G. 3, c. 151, § 17-20.

VII. Leven, 17 March 1818, 1 Mur. 865, 371.—Mackenzie, 11 Sept. 1818, 2 Mur. 20.—Allardyce, 8 April 1830, 4 W. & S. 102.—Smith, 27 Jan. 1835, 13 S. 523.—Wallace, 31 May 1838, 16 S. 1065.—Mackenzie, 25 June 1839, 14 F. C. 1106.—Graham, 8 May 1841, 2 Rob. 251.—Bartonsbill Coal Co. 17 June 1858, 3 M.Q. 266, 300. (See § 9.)

*Court to Apply  
Verdict.*

Judgment there-  
upon, or refusing  
new Trial, not to  
be questioned.

See 59 G. 3, c. 85,  
§ 20; *Infra*, § 9.

Power of Review  
of a Judgment in  
point of Law.

59 G. 3, c. 85, § 20.

Commissioners of  
the Jury Court to  
be appointed.  
§ x-xiv; *Rep. by*  
1 W. 4, c. 69.

laying the Printed Cases in such Appeal upon the Table of the House of Lords; and upon the Hearing of such Appeal, the House of Lords shall give such Judgment regarding the farther Proceedings, either by directing a new Trial to be had, or otherwise, as the Case may require.

VIII. And be it further enacted by the Authority aforesaid, That if a new Trial shall not be applied for, or shall be refused, or if the Exception taken to the Opinion and Direction of the Judge or Judges shall be disallowed, the Verdict shall be final and conclusive as to the Fact or Facts found by the Jury, and shall be so taken and considered by the Court of Session or by the Judge Admiral respectively in pronouncing their Judgment, and shall not be liable to be questioned anywhere.

IX. Provided always, and be it enacted by the Authority aforesaid, That in all Cases wherein the Court shall pronounce a Judgment in point of Law, as applicable to or arising out of the Finding by the Verdict, it shall be lawful and competent for the Party dissatisfied with the said Judgment in point of Law, to bring the same under Review, either by Representation or Reclaiming Petition, or by Appeal to the House of Lords, or where the Judge Admiral shall have pronounced Judgment in point of Law on the Verdict, it shall be lawful and competent for the Party or Parties to bring the same under the Review of the Court of Session as heretofore.

X. And be it further enacted by the Authority aforesaid, That immediately after the passing of this Act, it shall be lawful for his Majesty, his Heirs and Successors, to nominate and appoint, by Commission under the Seal appointed by the Treaty of Union to be kept and used in that Part of the United Kingdom called *Scotland*, instead of the Great Seal thereof, One chief Judge, and Two other Judges, before whom the Trial of Issues may be had and take place, to be called "The Lords Commissioners of the Jury Court in Civil Causes," and to hold their said Offices ad vitam, if this or any other Act under which they shall be Commissioners shall so long continue, or ad culpam; and in case of future Vacancies in the said Commission, the same shall be filled up by a Letter from his Majesty, his Heirs and Successors, directed to the President and Senators of the College of Justice: Provided always and nevertheless, that it shall be lawful for his Majesty, his Heirs and Successors, to remove the said Judges on an Address from both Houses of Parliament.

VIII. Walker, 16 Dec. 1825, 4 S. 823.—Mackay, 12 July 1827, 4 Mur. 291.—Gilchrist, 18 Dec. 1844, 7 D. 214.

IX. Clark, 10 July 1817, 1 Mur. 195.

XI. And be it enacted by the Authority aforesaid, That the Persons so to be nominated shall be Senators of the College of Justice, or Barons of the Court of Exchequer, in *Scotland*, and that they shall always be at the Time of their Nomination qualified to be Senators of the College of Justice.

*Jury Court.*

Of whom to be composed.

XII. And be it enacted by the Authority aforesaid, That from and after the passing of this Act, it shall and may be lawful for his Majesty, his Heirs and Successors, during the Continuance of this Act, to order and direct to be issued and paid in every Year by quarterly Payments, out of the Monies that shall arise from any of the Duties and Revenues in that Part of *Great Britain* called *Scotland*, which by the several Acts made in the Seventh and Tenth Years of the Reign of Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed by her Majesty, her Heirs and Successors, for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*, the Sum of Seven thousand Pounds; out of which Sum of Seven thousand Pounds there shall be paid and applied as Salary to the chief Commissioner of the Jury Court, such Sum yearly in addition to the Salary which he may receive as a Senator of the College of Justice, as a Lord Commissioner of the Court of Justiciary, or as a Baron of the Court of Exchequer, as will make his Salary equal to the full Salary of the Lord Justice Clerk; and that there shall be paid and applied out of the said Sum of Seven thousand Pounds, a Salary of Six hundred Pounds yearly to each of the Two other Commissioners, in addition to the Salaries which they may receive as Senators of the College of Justice, as Commissioners of the Court of Justiciary, or as Barons of the Court of Exchequer; and that of the said Sum of Seven thousand Pounds, the Sum of Two thousand four hundred Pounds shall be applied in Payment of the Salaries of the Clerks and other Officers of the said Jury Court, and be divided in such Proportions as his Majesty, his Heirs and Successors, shall direct and appoint; and that the Remainder of the said Sum of Seven thousand Pounds, or so much thereof as shall be certified by the chief Commissioner to the Court of Exchequer to be requisite, shall be applied in defraying the Expenses attending the Court and Circuits, the Application of which last mentioned Sum shall be accounted for in the Exchequer of *Scotland*.

Salaries to be paid.

XIII. And be it enacted by the Authority aforesaid, That the Trial of all Issues may be had and take place, and shall be good and effectual in the Law, whether the same is conducted in Presence of One or more than One of the

Issues may be tried before all or any of the Three Judges.

Trial and Verdict.

said Three Commissioners; and in all Cases in which the chief Commissioner shall be present, such chief Commissioner shall be the presiding Judge, and in his Absence, if the Two other Commissioners shall be present, such of the Two other Commissioners shall be the presiding Judge as shall be first named in the said Commission, and afterwards in the Order of their Appointment.

How the Commissioners shall vote.

XIV. And be it enacted by the Authority aforesaid, That in all Cases in which the said Three Commissioners shall be present in Court, and any Difference of Opinion shall arise, the Matter shall be determined by the Majority; but when Two of the said Commissioners are present in Court, and they shall differ in Opinion, then the Matter shall be determined by the Judge presiding.

Where Issues may be tried.

*This and 59 G. 3, c. 35, § 22; 6 G. 4, c. 120, § 86,—Am. by 1 W. 4, c. 69, § 9, 11.*

XV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to try such Issues at *Edinburgh* in time of Session; and also in time of Vacation at *Edinburgh*, and at such Circuit Towns, as in the Opinion of the said Court of Commissioners the Circumstances of the Case may require, at such Time in the Spring and Autumn Vacations immediately after such Issue is directed as they shall appoint.

Attendance of Witnesses.

*Am. by 13 & 14 V., c. 36, § 43.*

*A. of S., 8 July 1828.*

XVI. And be it enacted by the Authority aforesaid, That it shall be lawful for the Jury Court to grant Warrant for citing Witnesses and Havers, who shall attend and may be compelled to attend and be examined upon Oath, before the Jury Court when required, in the same Manner that Witnesses and Havers do attend or may be compelled to attend for the Purpose of Examination upon Oath by the Court of Session.

Verdicts how to be returned.

*Infra, § 33.*

*Am. by 59 G. 3, c. 35, § 19, 20.*

*See A. of S., 16 Feb. 1841, § 37.*

*Judge's Notes of Evidence to be conclusive.*

*Supra, § 7.*

XVII. And be it further enacted, That after the Trial of every such Issue or Issues, the Judge who presided shall forthwith make a Return to the Division or Lord Ordinary which directed the issue of the Order or Interlocutor, directing such Issue or Issues, with a Copy of the Verdict of the Jury indorsed thereon, certified by his Signature to be a true Copy; and that the said presiding Judge shall also, when required by such Division, deliver to them a Report in Writing of the Evidence adduced and given on the Trial of such Issue, as taken down by him at the Time, and of the Directions, if any, in point of Law; and the said indorsed Copy of the Verdict and the Report of the Proceedings on such Trial shall be conclusive of what passed on such Trial: Provided always, that it shall be lawful for the said presiding Judge to make such Return directly to the Judge Ad-

miral where the Issue shall have been directed upon his Report.

XVIII. And be it further enacted by the Authority aforesaid, That it shall be lawful for the Commissioner or Commissioners who shall have presided at the Trial of the Issue, to attend the Division of the Court of Session pending the Consideration of the Motion, or Petition for a new Trial, and then and there to give such Explanation of what passed at the Trial, as to the said Commissioner or Commissioners may seem fit or necessary.

XIX. And be it further enacted by the Authority aforesaid, That it shall be lawful for the House of Lords, in remitting to the Court of Session any Cause which is now or shall hereafter come before the said House by Appeal from the said Court of Session, to instruct the Division of the said Court of Session to which the Cause is remitted, to order and direct such Issue or Issues as the said House of Lords shall think fit, to be transmitted to the said Commissioners, for the Purpose of being tried by a Jury in Manner directed by this Act; subject nevertheless to such Rules and Regulations as are contained with respect to Remits in an Act passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords.*

XX. And be it further enacted by the Authority aforesaid, That a Jury shall be summoned for the Trial of such Issues as aforesaid, in the same Manner as the Jury is at present summoned to the High Court of Justiciary; and that such Summons shall issue by virtue of an Authority or Precept signed by the Clerk of the Jury Court; and that immediately upon Receipt of the said Authority or Precept, the Sheriff, Stewart, or other Officer or Officers employed to return Juries to the High Court of Justiciary, shall make out a List containing the Christian and Surnames, Additions, and Places of Abode of a competent Number of Persons qualified to serve as Jurors, and shall return the said List to the Clerk of the Jury Court, annexed to the said Authority or Precept, without Delay, the Names of the same Persons being always inserted in the Lists annexed to each Authority or Precept issued by the Clerk of the Jury Court in Manner aforesaid; which Number of Jurors shall not be less than Thirty-six in any County, City, Town, or Place, nor more than Fifty; and that the Persons named in the said Lists shall be summoned to serve as Jurors for the Trial of such Issues within

*Appeal.  
Jury Practice.*

Presiding Judge may attend Division pending Motion for new Trial.

House of Lords may direct Issues.

*Supra*, § 7, 8.

*See* 20 & 21 V., c. 56, § 8.

48 G. 8, c. 151, § 18.

Common Jury Summons.

§ xx-xxviii inclusive, *Am. by* 6 G. 4, c. 22; 7 G. 4, c. 8.

XIX. Morgan, 6 July 1858, 3 M.Q. 828.

XX. Smith, 19 May 1824, 3 Mur. 419.

*Jury Practice.*Common Jury  
Ballot.

the Counties, Cities, Towns, or Places named in such Authorities or Precepts respectively, and no others.

XXI. And be it further enacted, That the said Clerk of the Jury Court shall cause the Name of each and every Person who shall be included in the said Lists, and summoned as aforesaid, with his Addition and Place of his Abode, to be written on several and distinct Pieces of Parchment or Paper, being all as near as may be of Size and Bigness, and shall cause the said Pieces of Parchment or Paper to be rolled up as near as may be in the same Manner, and to be put together in a Box or Glass provided for that Purpose; and when any Issue shall be called on to be tried, some indifferent Person by Direction of the presiding Judge of the said Jury Court may and shall in open Court draw out the said Parchments and Papers one by one; and if any of the Persons whose Names shall be so drawn shall not appear, or be challenged and set aside, then such further Number, until Twelve Persons be drawn who shall appear; and after all Causes of Challenge shall be allowed or disallowed, the said Twelve Persons so first drawn and appearing, and approved as indifferent, their Names being marked in the List, and they being sworn, shall be the Jury to try the said Issue; and the Names of the Persons so drawn and sworn shall be kept apart by themselves in some other Box or Glass to be kept for that Purpose, till such Jury shall have given in their Verdict, and the same is recorded, or until the Jury shall by the Consent of the Parties or Leave of the Court be discharged, and then the same Names shall be rolled up again and returned to the former Box or Glass, there to be kept with the other Names remaining at that Time undrawn, and so toties quoties as long as any Issue remains then to be tried: Provided always, that in challenging the Jurors, it shall be lawful for each Party to have any Four Challenges allowed without assigning any Cause, the Challenges for Cause assigned (if any) being first made respectively.

XXII. And be it further enacted, That every Person or Persons whose Name or Names shall be so drawn as aforesaid, or who shall be summoned as a special Juror or special Jurors as aforementioned, and who shall not appear after being openly called Three Times, upon Oath made by some credible Person that such Person so making Default had been lawfully summoned, shall forfeit and pay for every Default in not appearing upon Call as aforesaid (unless some reasonable Cause of his Absence be proved by Oath or Affidavit to the Satisfaction of the Court or Commissioner

Fines on Jurors  
making Default.

*Am. by 59 G. 3,  
c. 35, § 26.*



who sits to try the said Issues) such Fine or Fines, not exceeding the Sum of Five Pounds, and not less than Forty Shillings, as the Court or Commissioner shall think reasonable to inflict or assess for such Default.

XXIII. Provided always, That if the Trial of any Issue shall be brought on in the said Jury Court before the Jury in any other Issue shall have brought in their Verdict or be discharged, it shall and may be lawful for the Court to order Twelve of the Residue of the said Parchments or Papers, not containing the Names of any of the Jurors who shall not have so brought in their Verdict, or be discharged, to be drawn in such Manner as is aforesaid, for the Trial of the Issue which shall be so brought on to be tried.

XXIV. And be it enacted by the Authority aforesaid, That it shall and may be lawful for either of the Parties, in any Case where an Issue or Issues is ordered to be tried by a Jury, to apply to the Division of the Court of Session ordering such Issue or Issues, or to the said Jury Court, to direct that the same shall be tried by a Jury specially chosen from Persons paying Cess in the County, City, Town, or Place from which such Jury shall be taken, upon One hundred Pounds of valued Rent, or paying assessed Taxes to the Crown on a House of the Rent of Thirty Pounds Sterling by the Year; the Persons so qualified as special Jurymen to be returned as herein enacted as to the common Juries: Provided always, that it shall not be competent to question any Order or Interlocutor for the striking of any Jury, by Reclaiming Petition or Appeal to the House of Lords.

XXV. And be it further enacted by the Authority aforesaid, That in order to secure the Return of Jurymen qualified to be special Jurymen as hereinbefore provided, the Sheriff, Stewart, or proper Officer or Officers employed to return Juries to the High Court of Justiciary, shall, immediately after the passing of this Act, and afterwards on or before the First Day in the Month of *January* in each Year, make up a Roll of all Persons within their District so qualified as special Jurymen in the immediately preceding Year, by paying Cess in the County, City, or Town in which such Persons reside, upon One hundred Pounds of valued Rent, or paying Taxes to the Crown on a House of Thirty Pounds Sterling by the Year; and shall return the said List to the Clerk of the Jury Court on or before the Thirty-first Day of the said Month.

XXVI. And be it further enacted by the Authority aforesaid, That the Number of qualified Persons to be returned by the Sheriff or Stewart as special Jurymen to

#### *Selection of Jury.*

Jury to be sworn though former Verdict not returned.

*Supra*, § 21.

#### *Special Jury.*

*Am. by 18 & 14 V., c. 86, § 42.*

*A. of S. 16 Feb. 1841, § 14.*

List of Persons qualified to be special Jurymen.

Jurymen how to be returned.

Selection of Jury.

Notice of striking  
the Jury to be  
given.

A. of S. 16 Feb.  
1841, § 15.

try any Issue shall be Thirty-six; and the Names of the said Thirty-six Persons shall be returned to the Clerk of the Jury Court, and shall by him be annexed to the Order or Interlocutor directing the Issue to be tried by a special Jury.

XXVII. And be it further enacted and provided by the Authority aforesaid, That the Clerk of the Jury Court shall form an exact Copy of the said List of Thirty-six Persons so returned by the Sheriff or Stewart; and when the Day of Trial has been fixed by the said Commissioners, he shall give due Notice to the Agents and Counsel of the Parties to attend him at a Time and Place to be specified in said Notice, which the Agents or Counsel of the Parties are hereby required to do; and the said Agents or Counsel shall, in the presence of the said Clerk, alternately, beginning with the Pursuer, strike off One from the said List, until the Number of Jurymen is reduced to Twenty, which Twenty only shall be summoned to attend the Court on the Day of Trial; and if either of the Parties, their Agents or Counsel, shall fail to attend, after such Notice duly served on them, then the other Party attending shall proceed to strike off One from the said List, and the Clerk of Court shall strike off One alternately: Provided always, that Twenty Names be left on the List to be summoned to attend the Trial; and the Jury for trying the said Issue shall consist of such Twelve of the said Twenty as shall first appear on the Names being called over in Court to try the Issue.

Taler.

XXVIII. And be it further enacted, That where a full Jury shall not appear before the said Jury Court or elsewhere, after Challenge by either of the Parties, and the Jury is like to remain untaken for Default of Jurors, it shall be lawful for the said Court, or the Commissioner before whom any Issue is to be tried, to direct the Sheriff or other Officer or Officers who summoned the said Jury, upon Request made by either Party, to add to the List of the said Jury the Name or Names of such other Person or Persons of the County, City, Town, or Place, where the Issue is to be tried, who shall be inserted in some other List of the Jurors, and who shall then be attending the Court where such Trial is to be had, to serve upon such Jury, and not any others, if so many out of the said other List be present in Court, or can there be found, and that either of the Parties, Pursuer and Defender, may have his Challenge to the Juror or Jurors so named and added to the former original List, in such wise as if he or they had been originally included in the said List of Jurors for the

Trial of such Issue; and that the said Court or Commissioner who sits to try such Issue shall and may proceed to the Trial thereof with those Persons whose Names were originally inserted in the said List of Jurors, together with the Person or Persons whose Names have been so added to the original List of Jurors as aforesaid, in the same Manner as the said Court or Commissioner might and ought to have done if all the said Jurors, whose Names were inserted in the said original List, had appeared to try such Issue; and in case any Person or Persons so added to the said List of Jurors as aforesaid, and who shall have been present at that Time, shall be called and not appear, or after his or their Appearance shall wilfully withdraw himself or themselves from the said Service, then and in every such Case the said Jury Court shall and may set a Fine upon every such Person making Default or wilfully withdrawing himself, such Fine not exceeding the Sum of Five Pounds Sterling, nor less than the Sum of Forty Shillings, as the said Jury Court shall think reasonable.

XXIX. And be it further enacted, That when it shall appear that it will be proper and necessary that the Jurors who are to try such Issues as aforesaid should have the View of the Houses, Lands, or Places in question, in order to their better understanding the Evidence that will be given upon the Trial of such Issues, in every such Case it shall be lawful for either Division of the said Court of Session by the special Interlocutor by which such Issue is directed, or for the said Jury Court, to order that a View should be allowed; and in every Case where such View is allowed as aforesaid, Six of the Jurors named in the said List, or summoned as special Jurors, or more, who shall be mutually consented to by the Parties or their Agents on both sides, and if the Parties cannot agree, Six or more of the first Twelve on the List of Jurors returned by the Sheriff, Stewart, or other Officer or Officers as aforesaid, shall have the View, and shall be first sworn, or such of them as shall appear upon the Jury to try the Issue before any drawing as aforesaid, and so many only shall be drawn to be added to Viewers who appear, as shall after all Defaulters and Challenges allowed, to make up the Number of Twelve, to be sworn for the Trial of the said Issue; and it shall and may be lawful for the said Jury Court, and they are hereby required in every such Case by an Authority or Precept signed by the Clerk of the Jury Court, to order and direct the Sheriff, or Officer or Officers, who shall summon the Jury for the Trial of such Issue, to have

View.

*Am by* 59 G. 3, c. 85, § 35.*A. of S.* 16 Feb 1841, § 16.

Procedure at Trial.

the said Jurors, who shall be so selected or named to be Viewers as aforesaid, at the Place in question, some convenient Time before the Trial of the said Issue, who should then and there have the Matters in question shewn to them by Two Persons named in the said Summons, and appointed by the said Jury Court; and the said Sheriff or other Officer or Officers shall certify upon the said last mentioned Authority or Precept, that the View hath been had according to the Direction contained therein, and shall forthwith return the same to the said Jury Court: Provided always, that the Expense of such View shall be equally borne by all Parties, and that no Evidence shall be given on either side at the Time of taking thereof: Provided also, that in case no View shall be had, or if a View shall be had by any of the Jurors contained in the said List, whether they shall happen to be any of the Jurors who shall be selected or nominated as aforesaid, yet the Trial of the said Issue shall proceed, and no Objection shall be made on thereof, or for want of a proper Certificate of the View having been taken as aforesaid.

Paying Jurors.

*Am. by 59 G. 3,  
c. 35, § 25.*

XXX. And be it further enacted, That every Person who shall serve upon a Jury for the Trial of any Issue or Issues, shall be allowed and paid by the Party or Parties against whom upon such Issue or Issues a Verdict shall be found, the Sum of Twenty Shillings: Provided always, that in case the Jury upon the Trial of any Issue shall return a special Verdict, the Sum to be paid to the several Jurors who shall serve upon such Trial shall be borne and paid by the Pursuer or Pursuers, Defender or Defenders, in equal Portions; and that the Party or Parties in whose Favour the Court of Session shall ultimately decide upon such special Verdict, shall be allowed the Sum so paid by him, her, or them, to the said Jurors in the Costs to be awarded by the said Court of Session.

Oath to be administered to the Jury.

*Infra, § 32.*

XXXI. And be it further enacted by the Authority aforesaid, That the Clerk of the Jury Court, before proceeding to the said Trial, shall administer to the Jury the following Oath; videlicet—

“You swear by God, and as you shall answer to God at the great Day of Judgment, That you shall well and truly try (*as the Case may be*) these Issues, or this Issue, and a true Verdict give according to the Evidence.”

Other Oaths how to be administered.  
*See Part IV., Law of Evidence.*

XXXII. And be it enacted by the Authority aforesaid, That this and all other Oaths necessary on the Trial of such Issues, shall be administered in the Manner and according to the Form at present in use in the High Court of Justiciary.

XXXIII. And be it further enacted by the Authority aforesaid, that the Chancellor or Foreman of the Jury shall be the Juror chosen by the Majority of the Jurors after they shall be sworn, and in case of an Equality of Votes, the Juror first sworn shall have a double Vote; and when the Verdict is returned to the Court, it shall be declared by the Chancellor or Foreman verbally in open Court, and taken down by the Clerk of the said Jury Court in Writing, before the Jury is discharged, to be afterwards indorsed and certified on the written Order or Interlocutor of the Court of Session directing the Issue.

*Procedure at Trial.*

Chancellor of the Jury to be elected.

*Record of Verdict.*  
*Supra*, § 17.

XXXIV. And be it enacted by the Authority aforesaid, That all Verdicts shall be given by the whole Number of the Jury agreeing in the Verdict.

Verdict how to be given.  
*Rep. by* 17 & 18  
V., c. 59; 22 & 23  
V., c. 7.

XXXV. Provided always, and be it enacted, That if a Jury impanelled shall not agree in their Verdict within the Space of Twelve Hours from the Time they shall be inclosed to consider of their Verdict, such Jury shall be discharged by the Jury Court from delivering their Verdict, and the said Court shall report the Proceeding to the Division of the Court of Session which directed the Issue, which Division may order another Jury to be summoned for the Trial thereof, or may dispose of the Cause in Manner and Form as at present practised: Provided always, that if the whole Number of any Jury who shall have been inclosed to consider of their Verdict, shall agree to apply to the Jury Court for further Time to consider of such Verdict, the said Jury Court are hereby required to grant such further Time beyond the said Period of Twelve Hours as such Jury shall desire.

Provision in case the Jury cannot agree.  
*Am. by* 22 & 23  
V., c. 7, § 2.

XXXVI. Provided always, and be it enacted, That no practising Advocate, Clerk to the Signet, Solicitor or Procurator before any of the Supreme or Inferior Courts, shall be returned or summoned to serve on such Juries.

Certain Persons exempted.  
*Selection of Jurors*;  
see 6 G. 4, c. 22;  
7 G. 4, c. 8.

XXXVII. And be it further enacted by the Authority aforesaid, That the said Lords Commissioners of the Jury Court, previously to their executing any of the Duties of their Office, shall take the usual Oaths to his Majesty, and the Oath de fideli; which Oaths the Lord President of the College of Justice, the Lord Justice Clerk, or the Lord Chief Baron of the Court of Exchequer, are hereby respectively authorized to administer.

Oaths to be taken by the Commissioners.

XXXVIII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for his Majesty, his Heirs and Successors, from Time to Time, as the State of the Business may require, to appoint Three Clerks to the said Jury Court, being Advocates or Writers to the

Clerks of Court how to be appointed.

*Jury Court Regulation.*

Oaths to be administered to Officers.

Rules and Regulations how to be framed.

*Ext. by 59 G. 3, c. 35, § 29, 30.*

*Procedure now regulated by A. of S. 3 July 1823, and 16 Feb. 1841.*

Jury Court where to assemble.

Signet of at least Three Years' standing, and Three Macers; and the said chief Commissioner shall have Power to appoint a Clerk during his Pleasure, who shall keep the Rolls of the Court, and perform other necessary Duties connected therewith; all of which Officers are hereby strictly prohibited and discharged from taking any Fees whatever, in respect of the Business of the said Offices.

XXXIX. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the said Jury Court to administer to the said Officers and Macers the usual Oaths to his Majesty, and upon the Trial of any Issue or Issues that may be directed under the Authority of this Act, also to administer the Oath de fidei to such Officers and Macers as shall attend upon the Trial of such Issue or Issues.

XL. And be it enacted by the Authority aforesaid, That it shall and may be lawful for the Court of Session, together with the Commissioners of the said Jury Court, or One of them, assembled by Authority of the Lord President, from Time to Time, as often as there shall be Occasion, to appoint a Committee, consisting of One Judge from each Division of the Court of Session, and One of the said Commissioners, for the Purpose of framing such Rules and Regulations as may be necessary for ordering the Form of Process, and regulating the Manner of Proceeding, as well in the said Court of Session as in the said Jury Court, both before the Trial of any Issue, during the Trial thereof, and subsequent thereto, for the Purpose of carrying into Execution the Directions and Provisions of this Act; and upon such Report being made by the said Committee, the same shall be taken into Consideration by the said Court of Session, and the said Commissioners assembled by the Authority of the Lord President, and such Order or Orders shall be made thereupon as to the said Court of Session, or a Quorum thereof, and the said Commissioners, or One or more of them, shall appear to be fit and proper.

XLI. And be it further enacted by the Authority aforesaid, That the said Jury Court shall be entitled to assemble and meet for the Purpose of trying any Issue or Issues to be directed as aforesaid at *Edinburgh*, in either of the Rooms now appropriated to the First and Second Divisions of the Court of Session, or in the Room used by the Court of Exchequer for Jury Trials, and at other Places in the Circuit Courts of Justiciary, the Sheriff Courts, or any other Place suitable and proper, as Circumstances and the Convenience of those Courts may admit; and that proper Apartments shall be allotted to the Clerks of the Jury Court in the Register Office in the same Manner as to the

Clerks of Session, and at other Places, as the Lord Clerk Register shall order and direct.

*Jury Court Regulation.*

XLII. And whereas the Provisions of this Act are to endure for Seven Years and no longer : And whereas it is expedient, with respect to such further Regulations as may be necessary during the Continuance thereof, as well as in regard to any future Provisions for Trial by Jury in Civil Causes, after the Expiration of the same, that regular Returns should be made to both Houses of Parliament of all Proceedings which shall from Time to Time take place under the Authority of this present Act ; be it enacted by the Authority aforesaid, that a Report shall be made to both Houses of Parliament once in every Year, on or before the Twenty-fifth Day of *March*, if Parliament shall be then sitting, and if Parliament shall not be then sitting, within Fourteen Days after Parliament shall assemble thereafter, of the Proceedings had by the Court of Session, or a Quorum thereof, and the Commissioners of the said Jury Court, or One of them, pursuant to this Act ; which Report shall be certified under the Hands of the Lord President of the Court of Session, the Lord Justice Clerk, and the chief Commissioner of the Jury Court, and shall contain Copies of all Rules and Regulations to be made for ordering the Form of Process, and regulating the Manner of Proceeding, as well in the said Court of Session, as in the said Jury Court, for carrying into Execution the Directions and Provisions of this Act.

Report to be made of Proceedings for carrying this Act into Execution.

XLIII. And be it enacted by the Authority aforesaid, That a Report shall be made by each Division of the Court of Session to both Houses of Parliament, once in every Year, on or before the Twenty-fifth Day of *March*, if Parliament shall be then sitting, and if Parliament shall not be then sitting, within Fourteen Days after Parliament shall assemble thereafter, specifying such Issues as shall have been directed by either of such Divisions of their own Motion, and such Issues as shall have been otherwise directed or refused by either of them ; and every such Report shall be certified under the Hands of any Two of the Judges of the Division by whom such Report is made.

Report to be made of Issues directed.

XLIV. And be it enacted by the Authority aforesaid, That a Report shall be made to both Houses of Parliament once in every Year, on or before the Twenty-fifth Day of *March*, if Parliament shall be then sitting, and if Parliament shall not be then sitting, within Fourteen Days after Parliament shall assemble thereafter, specifying the Issues tried pursuant to this Act, certified under the several Hands of the Commissioners who shall preside at the Trial of such Issues respectively, and such Reports may contain

Report to be made of Issues tried.

*Jury Court Regulation.*

Continuance of the Act.

such Observations as the Commissioner signing the same may think fit to make relative to such Issues.

XLV. And be it further enacted by the Authority aforesaid, That this Act shall endure and be in force for Seven Years from its Date, and to the End of the then next Session of Parliament.

## 59° GEORGII III. REGIS.

## CAP. XXXV.

[Jury Trials, 1819. Although, in accordance with the plan of the work, this Statute has been given entire, it has been printed in smaller type, the provisions of the Act being almost entirely obsolete.]

55 G. 3, c. 42.  
See A. of S. 16  
Feb. 1841.

Certain Actions to be sent to the Jury Court.

Rep. by 6 G. 4, c. 120, § 28; 13 & 14 V., c. 86, § 49.

Questions of Law reserved for the Court of Session.

*An Act to amend an Act, passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by extending Trial by Jury to Civil Causes.*—[19th May 1819.]

WHEREAS extending Trial by Jury to Civil Causes, in that Part of Great Britain called Scotland, in the Manner provided by an Act passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by extending Trial by Jury to Civil Causes*, has been attended with beneficial Effects to the Administration of Justice: And whereas it is expedient, that farther Provision should be made, to extend and regulate Trial by Jury in Civil Causes, and that the said Act should be in part altered and amended, and the Court thereby created be made a permanent Part of the judicial Establishment of Scotland; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Processes raised in the Outer House of the Court of Session, by ordinary Action or otherwise, on account of Injuries to the Person, whether real or verbal, as Assault or Battery, Libel, or Defamation, or on account of any Injury to Moveables, or to Lands, where the Title is not in question; or on account of Breach of Promise of Marriage, Seduction or Adultery, or any Action founded on Delinquency or quasi Delinquency of any kind, where the Conclusion shall be for Damages and Expenses only; the Lord Ordinary of the Outer House, before whom such Processes shall be enrolled, do remit, and he is hereby authorized and required, after Defences are lodged, to remit the whole Process and Productions forthwith to the Jury Court in Civil Causes; which last mentioned Court is authorized and required, according to Rules and Regulations which the said Court and the Court of Session are hereinafter empowered to make, to settle an Issue or Issues, and to try the same by a Jury to be summoned and impannelled under the Provisions now in force, or hereinafter enacted for that Purpose.

II. And be it enacted, That if it shall appear to the Parties, or either of them, that there is a Question of Law or Relevancy which

II. Johnston, 10 Aug. 1859, 8 M'Q. 685.



ought to be decided previous to the Remit of the Cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary; who, if he thinks fit, may give Judgment de plano, or order Pleadings on the alleged Question of Law or Relevancy; and if he orders Pleadings, then the Case is to be proceeded in according to the Course of the Court of Session; and as soon as such Question of Law or Relevancy shall be disposed of, if Matters of Fact remain to be proved, the whole Process and Productions in the Case shall be forthwith remitted to the Jury Court for the Purposes aforesaid.

*Remits to Jury Court.*

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III. And be it further enacted, That it shall be competent for the Lord Ordinary, if it shall appear to him that there is no Question of Law or Relevancy which ought to be decided previous to the Remit of the Cause to the Jury Court, forthwith to order such Cause to be remitted to the said Court, for the Purposes aforesaid: Provided always, that it shall also be competent for the Lord Ordinary, if he sees Cause, to reserve the alleged Question of Law for the Consideration of the Court of Session, after the Matters of Fact shall have been found by a Jury; and in all such Cases, the Interlocutor of the Lord Ordinary, ordering the Cause to be remitted to the Jury Court, whether with or without a Reservation of the alleged Question of Law, shall not be subject to Review by Representation, Petition, Appeal to the House of Lords, or otherwise.

Lord Ordinary to decide as to Question of Law.

IV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Lords Ordinary, in all Cases other than the Actions for Damages hereinbefore enumerated, when Matters of Fact are to be proved, to order the whole Process and Productions in the Cause to be remitted to the Jury Court, without reporting to the Inner House; and the said Jury Court is hereby authorized and required to settle an Issue or Issues, and try the same by a Jury, in Manner aforesaid; and if it shall appear to the said Lords Ordinary to be expedient for the due Administration of Justice, they may pronounce an Interlocutor pointing out the Matters of Fact which they require to be determined by a Jury; and the said Jury Court is hereby authorized and required to settle an Issue or Issues, in Terms of such Interlocutor, and such other Issue or Issues as may arise out of the Examination of the Case by the said Court, and to try the same by a Jury, in Manner aforesaid.

Lords Ordinary to have the Power of remitting whole Process to Jury Court, without reporting to the Inner House.

V. And be it further enacted by the Authority aforesaid, That it shall be lawful for the Lords Ordinary, in all Cases other than the Actions for Damages hereinbefore enumerated, when Matters of Fact are to be proved, to prepare and settle an Issue or Issues without reporting to the Inner House; and to remit the same when settled to the Jury Court, to be there tried by a Jury; but nothing herein contained shall take away from the Lords Ordinary, in such Cases, the power of reporting an Issue or Issues to the Inner House, in the Manner and Form now in force.

The Lord Ordinary to have the Option of reporting.

VI. And be it further enacted by the Authority aforesaid, That it shall be lawful and competent for the Court of Session in either of its Divisions, in all Cases depending in the Inner House in which Matters of Fact are to be proved, if it shall appear to them expedient for the due Administration of Justice, to order and direct, by special Interlocutor, the whole Process and Productions to be remitted to the Jury Court, for the said Court to settle an Issue or Issues, and to try the same by a Jury, as aforesaid: And if it shall appear to the said Divisions to be expedient for the due Administration of Justice, they may pronounce an Interlocutor, pointing out the Matters of Fact which they require to be determined by a Jury, and the said Jury Court is hereby authorized and required to settle Issues, in Terms of such Interlocutor; and the said Court may likewise settle such other Issues as

The Division to have the Power of transmitting the whole Process to the Jury Court.

*Remits to Jury Court.*

The Division to prepare and settle Issues,

and the Divisions and Lord Ordinary to settle further Issues.

Jury Court to direct Facts to be indorsed, etc.

*Infra*, § 20.

The Court of Admiralty to transmit the whole Process.

If the Court of Admiralty refuse to transmit, the Court of Session may be applied to by Petition to order it.

may arise out of the Examination of the Case by the said Court, and try all such Issues by a Jury in Manner aforesaid.

VII. And be it further enacted by the Authority aforesaid, That it shall be competent and lawful for either Division of the Court of Session, in all Processes other than the Actions of Damages hereinbefore enumerated, when it shall appear to them expedient for the due Administration of Justice, to prepare and settle an Issue or Issues, and to send the same to the Jury Court, to be there tried by a Jury, in Manner aforesaid.

VIII. And be it further enacted, That the said Divisions, or the Lords Ordinary, in all Processes which come before them for Judgment after Verdict, may direct such further Issue or Issues as they may see necessary, to enable them to pronounce Judgment in the Cause.

IX. And be it further enacted by the Authority aforesaid, That it shall be competent to the Judges of the Jury Court to order and direct any Facts not falling under the Issues, but which shall appear in Evidence, and which they shall deem material to the Merits of the Case, or important to the Decision of the Law, to be found by the Jury, and to be indorsed on the Issue or Issues, or on a Paper or Parchment to be attached to the Issue or Issues, and certified under the Hands of the Judge who tries the Cause, and returned with the Verdict and Issues to the Division of the Court of Session, or the Lord Ordinary, by whom the Case was sent to the Jury Court.

X. And be it further enacted by the Authority aforesaid, That it shall and may be lawful and competent for the Judge of the High Court of Admiralty, in all Processes relating to the running down of or other Injury to Ships, and relating to Policies of Insurance and Charter Parties, and in all maritime and mercantile Cases competent to his Jurisdiction as a Civil Judge, wherein Matters of Fact are to be proved, to order, by special Interlocutor, the whole Process and Productions, without reporting to the Court of Session, to be remitted to the Jury Court; which Court is hereby authorized and required finally to settle the Issue or Issues in the Cases so remitted, and to try the same by a Jury in Manner aforesaid: Provided always, that nothing herein contained shall prevent the Judge Admiral, in all Cases which come before him for Judgment after Verdict, from directing such further Issue or Issues as he may see necessary, to enable him to pronounce Judgment thereon: And it shall likewise be competent to the Judges of the Jury Court to order and direct any Facts not falling under the Issues, but which shall appear in Evidence, and which they shall deem material to the Merits of the Case, or important to the Decision of the Law, to be found by the Jury, and to be indorsed on the Issues, or on a Paper or Parchment to be attached to the Issue or Issues, and certified under the Hand of the Judge who tries the Cause, and returned with the Verdict and Issues to the Judge of the Admiralty Court.

XI. And be it further enacted by the Authority aforesaid, That it shall be competent to either of the Parties in any such Action in the Court of Admiralty, if the Judge Admiral shall refuse to order a Remit to be made to the Jury Court, as hereinbefore authorized and empowered, for the Purposes aforesaid, to apply for a Review of the Deliverance to that Effect to the Court of Session, in either of its Divisions, by Petition, to be intimated Three Days before the same is boxed; which Court, if it shall see Cause, is hereby authorized to pronounce an Interlocutor instructing the Judge Admiral to make such Remit.

XII. And be it further enacted by the Authority aforesaid, That it

shall be competent and lawful for the Jury Court, when it appears to the said Court in the Course of settling an Issue or Issues, or at any Time before Trial, in the Cases remitted to them as aforesaid, that there is a Question or Questions of Law or Relevancy which ought to be previously decided, to remit back the whole Process and Productions to the Division of the Court of Session, the Lord Ordinary or Judge Admiral, who remitted the same to the Jury Court, that the Question or Questions of Law or Relevancy may be considered and determined there: Provided always, that it shall be lawful to the said Division, Lord Ordinary, or Judge Admiral, when Matters of Fact shall after such Consideration or Determination remain to be proved, again to remit the whole Process and all the Productions to the Jury Court, in order that an Issue or Issues may be prepared and tried as aforesaid: Provided further, that it shall be competent to the said Division and Lords Ordinary to prepare and settle an Issue or Issues in Manner aforesaid, for the Purpose aforesaid; and it shall be competent for the Jury Court, when it appears to the said Court in the Course of settling an Issue or Issues, that a Case turns upon Matter of complicated Accounts, or other Matter to which Trial by Jury is not beneficially applicable, to remit back the whole Process and Productions as aforesaid, with their Report thereon, in order that the Division, Lord Ordinary, or Judge Admiral, may proceed with the same in such Manner as shall appear to be most expedient for the Administration of Justice.

XIII. And be it further enacted by the Authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to prevent the Court of Session, in either of its Divisions, or the Lords Ordinary (save and except in the Cases concluding for Damages hereinbefore enumerated), or the Judge Admiral, unless otherwise instructed as aforesaid by the Court of Session, to take Proof on Commission, by Remit, or in presentia, and thereafter disposing of the Cause in the Manner now practised in such Cases.

XIV. And be it further enacted by the Authority aforesaid, That in all Cases brought from an Inferior Court to the Court of Session, wherein Proof by Witnesses has been taken by Order of the Inferior Court, the Court of Session, in either of its Divisions, or the Lords Ordinary, if they deem further Proof to be expedient to be taken, shall direct the same to be taken, and the Investigation of the Facts to be completed according to the Forms of the said Court, unless the Parties consent to cancel the Depositions of such Witnesses as are alive and within *Scotland*; in which Case it shall be competent for the Court of Session, or Lords Ordinary respectively, to direct the Case to be sent to the Jury Court, in Manner provided by this and the aforesaid Act of the Fifty-fifth Year of the Reign of his present Majesty: Provided always, that nothing herein contained shall restrain the Court of Session, in either of its Divisions, or the Lords Ordinary, from directing Issues in the Cases brought before them from an Inferior Court, as aforesaid, on any Point or Points not connected with the Proof already taken before such Court.

XV. And be it further enacted by the Authority aforesaid, That it shall not be competent, by Representation, Reclaiming Petition, Bill of Advocation, Appeal to the House of Lords, or otherwise, to bring under Review any Interlocutor by the said Divisions, Lords Ordinary, or Judge of the Admiralty, ordering a Trial by Jury.

XVI. And be it further enacted by the Authority aforesaid, That in all Cases in which general Verdicts are found by a Jury, all Motions for setting aside the Verdict, and granting a new Trial, shall hence-

*Mode of Trial.  
New Trial.*

Jury Court to have a Power to re-transmit Questions of Law;

also certain other Cases.

The Court of Session still to grant Commissions when it shall see proper.

*Am. by 13 & 14 V., c. 36, § 49; 6 G. 4, c. 120, § 14.*

*A. of S. 11 Mar. : 1800.*

Cases brought by Advocation or Suspension, wherein Proof has been commenced by Witnesses.

*Am. by 6 G. 4, c. 120, § 40.*

Orders to try by Jury cannot be appealed from. *This and 55 G. 3, c. 42, § 4, rep. by 13 & 14 V., c. 36, § 38.*

Motions for new Trial to be in Jury Court, except on special Verdicts, and the Judgment

*Bill of Exceptions.*

to be final, unless for Misdirection of Judges in Matters of Law.

*Am.* 55 G. 3, c. 42, § 6. *See* 6 G. 4, c. 120, § 87. *A. of S.* 16 Feb. 1841, § 86-89.

Bill of Exceptions to Judgment in certain Cases may be tendered.

*Ext.* 55 G. 3, c. 42, § 7.

*Am. by* 1 W. 4, c. 69, § 7.

*Restrictions.*

7 W. 4, c. 14.  
13 & 14 V., c. 36,  
§ 45.

Proceedings to remain in Jury Court.

Verdict to be final, and Judgments on Verdicts to be entered in Jury Court, and Execution to proceed on them.

*Infra*, § 20.

55 G. 3, c. 42, § 17.

forth be made in the Jury Court, and not in the Court of Session; and the Order for granting or refusing a new Trial by the Jury Court shall be final, and not subject to Review, by Petition, Representation, Appeal to the House of Lords, or otherwise; and there shall be at least Two Judges in Court when a Motion is made for a new Trial, or an Order is pronounced granting or refusing the same.

XVII. And it is hereby enacted, That if the Motion for setting aside the Verdict be founded on the Misdirection of the Judge at the Trial in Matter of Law, or on the undue Admission or Rejection of Evidence, it shall be competent to the Party against whom Judgment is given by the Jury Court, to tender a Bill of Exceptions to such Judgment in the same Manner as at a Trial; and the Proceedings on such Bills of Exceptions shall be conformable in all respects to the Provisions of the Act of the Fifty-fifth Year of the Reign of his present Majesty, hereinbefore recited, regarding Bills of Exception: Provided always, that in all Causes remitted by the Court of Admiralty to the Jury Court, the Bills of Exception shall be presented by the Judge of the Jury Court to the Divisions of the Court of Session alternately, beginning with the First Division; provided further, that Motions for new Trials on a special Verdict, or special Findings, shall be made in the Division of the Court of Session from which the Proceedings were sent to the Jury Court, in Manner directed by the said recited Act of the Fifty-fifth Year of the Reign of his present Majesty: Provided nevertheless, that the Interlocutor to be pronounced on such Motions shall be final, and shall not be subject to Review by Petition, Representation, Appeal to the House of Lords, or otherwise.

XVIII. And be it further enacted by the Authority aforesaid, That in all Cases of new Trial in which a Bill of Exceptions to a Decision in the Jury Court is presented to the Court of Session, the Process and Productions shall remain in the Jury Court, in order to enable that Court to proceed in the new Trial, if the Judgment shall be reversed; or to proceed to pronounce Judgment upon a general Verdict, in case it shall be affirmed: Provided always, that it shall be competent to the Divisions of the Court of Session to order the said Process and Productions to be brought into the said Division, when it shall deem the same to be necessary; and after an Interlocutor shall be pronounced upon the Bill of Exceptions, the said Process and Productions shall be returned to the Jury Court, for the Purposes aforesaid; and that in all Cases of special Verdicts or special Findings, in all Cases where the Judgment of the Jury Court on a Bill of Exception, other than new Trials, is affirmed, the whole Process and Productions shall be forthwith remitted to the Court of Session, that the said Court may proceed to discuss the Law of the Case, and pronounce Judgment thereon.

XIX. And be it further enacted by the Authority aforesaid, That in all Cases where the Verdict of the Jury exhausts the Conclusions of the Action (except certain Cases as hereinafter provided), it shall and may be lawful, after the Elapse of the Time allowed for moving for a new Trial, or after a new Trial shall have been finally refused, for the Judge or Judges of the Jury Court, by a Judgment or Deliverance on the Verdict to be issued, and to be subscribed by the presiding Judge, without the Necessity of any Motion to that Effect, to ordain that all Manner of legal Execution shall pass upon the same in common Form; and it shall and may be lawful for the Judge or Judges of the Jury Court to award not only the Expenses incurred in the said Court, but also the previous Expenses incurred in the Court of Session, Court of Admiralty, or Inferior Court, and to require the Auditor of the Court of Session to tax the same; and the said Judgment shall specify the Expenses, in the said Courts and in the Jury

XVII. *See* Cases noted under 55 G. 3, c. 42, § 6, 7.

Court; and a Copy of the Verdict and Judgment, certified under the Hand of One or other of the Clerks of the Jury Court, shall be a sufficient Warrant for all legal Diligence and Execution, and equally effectual to all Intents and Purposes as if the same were an extracted Decree of the Court of Session, and shall be observed as such by the Lords Ordinary on the Bills, Clerks of the Bills, Keepers of the Signet, and all others; and that the Letters under the Signet shall in such case bear, that they proceed on the Judgment of the Commissioners of the Jury Court, in those Instances in which, according to the present Practice, they bear, that they proceed on the Decree of the Lords of Council and Session; and the original Verdict and Judgment thereon, together with the whole Steps of Proceeding, and such Productions as may not have been taken up by the Parties entitled thereto, shall in all such Cases be transmitted for Preservation to the Keeper of the Records of the Court of Session, and in other respects dealt with in the same Way and Manner as the extracted Processes in the Court of Session are or may be transmitted and dealt with.

XX. Provided always, and be it enacted by the Authority aforesaid, That in special Verdicts, and in all Cases where the Verdict contains any special Findings, which may require the Judgment of the Court of Session on the Law, and also in all Processes of Reduction or Declarator, and in all Processes wherein the Decree to be pronounced will form a Part of the Title, or will affect or qualify the Title to any heritable Estate, the Verdict, with the whole Process and Productions, shall be returned to the Court of Session, in order that the said Court may pronounce Decree in the said Cause: Provided always, in Cases remitted by the Admiralty Court, when the Return by the Jury is in the Form of a special Verdict or special Findings, which may require the Judgment of the Judge Admiral on the Law, the Verdict, with the whole Process and Productions, shall be returned into the Admiralty Court, that the Judge Admiral may pronounce Judgment in the Cause; and that in Cases remitted by the Court of Admiralty, the Bills of Exception shall be returned to the Divisions of the Court of Session alternately, beginning with the First, unless the Case was sent to the Jury Court in consequence of a Petition to the Court of Session as hereinbefore enacted, in which Case the Bill of Exceptions shall be returned to the Division to which the previous Petition was presented.

XXI. And be it further enacted by the Authority aforesaid, That there shall be certain distinct Periods of the Year for the Meeting of the Jury Court, to be called The Term, allotted for such Matters as do not require the Intervention of a Jury; and that there shall be certain other distinct Periods, to be called The Sittings, allotted for Trials by Jury; and the Jury Court shall, for the Purposes first aforesaid, keep and observe Four Terms in every Year, whereof One, to be called The *January* Term, shall commence yearly on the Twelfth of *January*, and shall end on the Twelfth Day of *February*; another, to be called The *May* Term, shall commence yearly on the Twelfth Day of *May*, and shall end on the Fifth Day of *June*; another, to be called the *June* Term, shall commence yearly on the Sixteenth Day of *June*, and end the Tenth Day of *July*; and the Fourth, to be called The *November* Term, shall commence yearly on the Twelfth Day of *November*, and shall end on the Tenth Day of *December*; and if any of the said Days on which the said Terms shall begin or end shall happen to be a *Sunday*, then such Term respectively shall begin or end on the next Day following.

XXII. And be it further enacted, That the said Court shall, for the Purposes last aforesaid, keep and observe Three Sittings in every Year, one to commence on the Day immediately after the *January*

*Special Verdicts.  
Sittings.*

In Cases of special Verdicts, etc., Proceedings to be returned to the Court of Session.

*Am.* 55 G. 3, c. 42, § 17.

*Id.* § 9.

*Supra*, § 19.

*A. of S.* 16 Feb. 1841, § 40.

Admiralty Court.

Terms and Sittings fixed.

*Rep.* by 6 G. 4, c. 120, § 36.

Three Sittings in every Year.

*Rep.* by 6 G. 4, c. 120, § 36.

*See* 1 W. 4, c. 69, § 9.

*Adjustment of  
Issues, etc.*

Term, another to commence the Day immediately after the *June Term*, the other to commence the Day immediately after the *November Term*; and if any of the said Days on which the said Sittings shall begin shall happen to be a *Sunday*, the said Sittings respectively shall begin on the Day next following; and all such Sittings shall be held, if necessary, from Day to Day, on every lawful Day, and shall so continue and endure, according to Exigency of Business; and it shall likewise be competent to the said Court to appoint Cases to be tried by Jury at other Times than the regular Sittings, when in their Judgment it shall appear to be necessary; and the Judges of the said Court shall hold Circuits in the Spring and Autumn Vacations, as at present practised.

Proceedings for  
preparing Issues.

XXIII. And be it further enacted by the Authority aforesaid, That the Proceedings for preparing and settling Issues, for hearing and determining all Matters necessary for forwarding Cases to be tried by Jury, the hearing of all Motions respecting Judgments, new Trials, Expenses of Process; all Applications for Remits to the Court of Session, and all other Matters and Things falling within the Jurisdiction of the Jury Court, and not requiring the Intervention of a Jury, may and shall be heard and determined during the Term only: Provided always, that nothing herein contained shall prevent One or more Judge or Judges of the Jury Court from making Orders out of Term, on the Application of Parties by the Counsel, respecting Commissions for the Examination of Witnesses, respecting the Inspection of written Evidence previous to a Trial by Jury; and in all other Matters and Things relative to furthering the Trial of Causes at the Sittings or on the Circuits, in case such Application could not have been made during the preceding Term; such Judge or Judges being satisfied, by Affidavit or otherwise, that the Application so made could not have been made in the preceding Term; and nothing herein contained shall prevent the Judge or Judges presiding at the Trial of any Case from putting off the same on account of the Absence of a material Witness or Witnesses, or for any other Cause in which Justice requires that a Trial should be put off; provided it is ascertained, by Affidavit to the Satisfaction of the Judge or Judges, that there is good Cause for so doing, and that such Cause could not have been foreseen in Time, to have moved the same in the preceding Term.

Regulations as to  
Condescendences  
and Answers.

XXIV. And be it further enacted by the Authority aforesaid, in all Processes in which the Jury Court is to settle the Issues, That Rules and Regulations shall be and are hereby directed to be framed for ordering Condescendences and Answers, by virtue of the Authority given in this Act for making Rules and Regulations, so that the Condescendences and Answers may either be in the Court of Session or in the Jury Court, as may be found most expedient; and in all Cases in which Condescendences and Answers shall be ordered in the Jury Court, the Clerk of the said Court shall collect the Fees on such Proceedings payable in the Court of Session, and shall account to the Officer in the Court of Session entitled to receive the same, for all Fees which shall be so collected.

Provision as to the  
Sum to be paid to  
Jurors.

*Am. 55 G. 8, c. 42,  
§ 80.*

XXV. And be it further enacted by the Authority aforesaid, That the Amount of the Sum to be paid to each Juror for serving on a Jury shall be regulated by the Order of the Judge or Judges presiding at the Trial; provided that the said Judge or Judges shall not order more to be paid to any Jurymen than Twenty Shillings for any One Trial, unless in Cases of Adjournment to a Second Day, when the Sum to be paid to him may, in the Discretion of the Judge or Judges, be extended to Forty Shillings; every such Sum to be paid by the Parties in Manner now provided and in force.

XXVI. And be it further enacted by the Authority aforesaid,

That from and after the passing of this Act, it shall no longer be necessary for the Officer of any Sheriff or Stewart Depute or Substitute to attend in the Jury Court for the Purpose of proving the Service of a Summons served on any Juror, for enabling the said Court to proceed to impose a Fine on such Juror for not obeying their Summons, but it shall henceforth be lawful for the Jury Court, at its Sittings or Circuits, to proceed in respect to absent Jurors according to the Course which prevails in the Court of Justiciary.

XXVII. And be it further enacted by the Authority aforesaid, That the Sheriffs Depute and Substitute of Counties, and the Magistrates of Burghs, at the Place where the Judges of the Jury Court hold their Circuit, shall furnish the same Attendance of Officers on the Judges of the said Court on such Occasion, as is in use to be provided for the Lords of Justiciary on their Circuits, and the Expense thereof shall be reimbursed to the said Sheriffs and Magistrates in the same Manner as is now done in the Case of the Justiciary Circuit.

XXVIII. And be it further enacted, That it shall be competent to the Jury Court to issue their Order or Orders, Diligence or Diligences, for summoning Witnesses, and for Production of Writings, and for all other Matters and Things which the said Court may judge proper and necessary, in Manner and Form as is practised by the Court of Session; and that the said Jury Court shall have the same Power and Authority in granting the Protections to Witnesses, committing for Prevarication and Contempt, in every respect, in Cases depending before them, as is competent to the Court of Session, without any Exception or Limitation whatever; and that the Orders of the said Court shall be executed by all public Officers in the same Way as the Orders of the Court of Session; which the said public Officers and Magistrates are hereby enjoined and authorized to execute accordingly.

XXIX. And be it further enacted by the Authority aforesaid, That from and after the passing of this Act, it shall be lawful for the Lords Commissioners of the Jury Court, or any Two of them, to assemble from Time to Time, and as often as there shall be Occasion, for the Purpose of framing such Rules and Regulations as may be necessary for settling an Issue or Issues, and for ordering the Forms of Process, and regulating the Proceedings in the said Court, in all Matters and Things falling within the Jurisdiction of the said Court; and that the said Rules and Regulations shall be reported to the Court of Session, assembled for the Purpose by the Authority of the Lord President, together with the Lords Commissioners of the Jury Court, who shall take the same into Consideration; and upon such Report being approved, the same shall be entered in the Books of Sederunt of the Court of Session, and in the Sederunt book of the Jury Court: Provided always, that such Regulations as are applicable, not only to the Jury Court but also to the Court of Session, shall be framed in the Manner provided by the foresaid Act of the Fifty-fifth Year of the Reign of his present Majesty.

XXX. And whereas great Inconvenience has arisen in the Administration of Justice in the Jury Court, out of the Regulations now in force respecting the precognoscing of Witnesses by the Agents of Parties, also respecting the Cross-examination of Witnesses, and in other Matters of Regulation as to Evidence; be it enacted by the Authority aforesaid, That it shall be lawful for the Judges of the Court of Session, and of the Jury Court, being assembled for the Purpose of passing Acts of Sederunt, as provided by the said Act of the Fifty-fifth Year of his present Majesty, to make Acts of Sederunt, establishing such Regulations and Rules of Court for the Preparation of Evidence and the Examination of Witnesses, as shall be expedient for the due Administration of Justice in the Jury Court.

*Jury Court Regulation.*

Court to proceed against absent Jurors.  
*Am. 55 G. 3, c. 42, § 22.*

Attendance of Officers.  
*1 W. 4, c. 69, § 11.*

Jury Court may compel the Attendance of Witnesses, etc.  
*Am. 55 G. 3, c. 42, § 16.*  
*Am. by 18 & 14 V., c. 86, § 43.*

Power to make Rules and Regulations for the Proceedings of the Court;  
*Am. 55 G. 3, c. 42, § 40.*  
*Infra, § 30.*

and for the Cross-examination of Witnesses.  
*Supra, § 29.*

*Jury Court Regulation.*

An additional Clerk to be appointed.

Three assistant Clerks to be appointed.

Auditor of Court, of Session to be the Auditor of the Jury Court.

50 G. 8, c. 112, § 48; *Sched.*

Power to appoint interim Clerks.

Viewers in some northern Counties regulated.

*Am.* 55 G. 8, c. 42, § 29.  
*A. of S.* 16 Feb. 1841, § 16.

XXXI. And be it further enacted by the Authority aforesaid, That from and after the First Day of *December* One thousand eight hundred and nineteen, it shall and may be lawful for his Majesty, his Heirs and Successors, to appoint a Fourth Clerk to the said Jury Court, in the Manner in which the present Clerks of the said Jury Court were directed to be appointed by the said recited Act passed in the Fifty-fifth Year of the Reign of his present Majesty, with a Salary not exceeding the Sum of Six hundred Pounds per annum, payable in the same Manner and at the same Periods as the Salaries authorized to be granted to the present Clerks of the said Jury Court are directed to be paid and are payable by virtue of the said recited Act; and the said Salary of such Clerk, as well as the Salaries of the other Clerks of the Jury Court, shall be subject to such and the like Taxes and Deductions, and none other, to which the Salaries granted to the Clerks of the Court of Session are subject and liable.

XXXII. And be it further enacted by the Authority aforesaid, That from and after the said First Day of *December* One thousand eight hundred and nineteen, it shall and may be lawful for his Majesty, his Heirs and Successors, to appoint Three assistant Clerks, or Closet Keepers, to the said Jury Court, with Salaries not exceeding the Sum of Three hundred Pounds per annum to each, payable in the same Manner and at the same Periods as the Salaries authorized to be granted to the Clerks of the said Jury Court are directed to be paid by the said recited Act and this Act.

XXXIII. And be it further enacted by the Authority aforesaid, That in all Cases in which the Jury Court is authorized to award and allow Expenses, the Accounts of such Expenses shall be audited, settled, and reported upon, by the Person exercising the Office of the Auditor of the Court of Session in either of its Divisions, who shall be and is hereby declared to be Auditor of the Jury Court; and such and the like Fees shall be paid to such Auditor as in the Case of Accounts of Expenses audited, settled, and reported upon in the Court of Session, under the Authority of an Act passed in the Fiftieth Year of the Reign of his present Majesty, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session, and for the Regulation of certain Parts of the Proceedings of that Court*; and such Auditor shall become entitled to the said Fees from and after the First Day of *December* and the Twelfth Day of *January* next, according as Expenses in the Court of Session or other Courts, or in the Jury Court, may arise, and are awarded by the Jury Court.

XXXIV. And be it further enacted by the Authority aforesaid, That in case of the Absence from Illness or other sufficient Cause of the Clerk or Clerks of the Jury Court, either at *Edinburgh*, or on the Circuits, it shall be lawful for the presiding Judge to appoint, by Writing, signed by the said Judge, and afterwards to be entered in the Sederunt Book of the Court, a proper Person to act as Clerk for the Occasion, to whom the Oaths appointed to be taken by the Clerks of the Jury Court shall be administered previous to his Acting.

XXXV. And be it enacted by the Authority aforesaid, That in Cases where an Order for a View has been obtained, and that the Place to be viewed lies in the Counties of *Sutherland*, *Caitness*, and *Orkney*, which Counties are not required to send Jurors to *Inverness*, the Sheriffs Depute or Substitute of the said Counties respectively shall return Three Persons of the County in which the Action arises, to be the Viewers; and that the said Viewers shall be bound to attend at the Trial, and be first called to serve on the Jury; the Manner of Proceeding to take the View, and the Qualification of the Jurors, being subject always to the Regulations now in force respecting Views, and respecting the Qualification of Jurors; and if from any



Cause it shall be expedient that Viewers should be sent from a neighbouring County, the Jury Court shall issue an Order for a certain Number of Jurors of the nearest County from which it may be expedient that Viewers should be taken, and they shall be bound to attend the View, and shall be first called to serve on the Jury, as at present practised.

*Jury Court Regulation.*

XXXVI. And be it further enacted by the Authority aforesaid, That the Jury Court in Civil Causes, created under the Authority of the aforesaid Act of the Fifty-fifth Year of the Reign of his present Majesty, with all the Officers belonging thereto, and to the Lord Chief Commissioner thereof, shall remain in all Time coming a Part of the judicial Establishment of Scotland, and of the College of Justice therein, subject to such Regulations, for the better Administration of Justice, as may hereafter be made by Parliament.

Jury Court made permanent.

XXXVII. And be it further enacted by the Authority aforesaid, That this Act shall take Effect in directing the Proceedings of the Court of Session from and after the First Day of December next, and in directing the Proceedings of the Jury Court from and after the Twelfth Day of January next, except as to the framing and passing Rules and Regulations, which, as hereinbefore enacted, may be framed and passed at any Time from and after passing of this Act; declaring always, that it shall be competent for the aforesaid Courts respectively to proceed in Manner and Form now practised, until the First Day of December and Twelfth Day of January aforesaid.

Commencement of the new Judicature.

XXXVIII. And be it enacted by the Authority aforesaid, That so much of the said recited Act of the Fifty-fifth Year of the Reign of his present Majesty, as requires that the chief Commissioner of the Jury Court be a Senator of the College of Justice, or a Baron of Exchequer in Scotland, be and the same is hereby repealed; but that no Person shall be appointed to be chief Commissioner of the said Court, unless he be qualified to be appointed a Senator of the College of Justice; and when at any Time the Person holding the said Office shall not hold any other judicial Office than that of chief Commissioner, every such Person, during the Time he shall hold the said Office of chief Commissioner and no other judicial Office, shall be entitled to such Salary as shall be equal to the Salary of the Person holding the Office of Lord Justice Clerk in Scotland; and such Salary to such chief Commissioner shall be directed to be paid, and shall be payable, in the Manner and at the same Periods as the Salary granted to the Person holding the Office of chief Commissioner of the Jury Court is now, by virtue of the said recited Act passed in the Fifty-fifth Year of the Reign of his present Majesty, directed to be paid.

Qualification of the Lord Chief Commissioner of the Jury Court, and Appointment of Salary.

XXXIX. And whereas by an Act passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act for enabling his Majesty to grant Annuities to the Judges of the Courts of Session, Justiciary, and Exchequer in Scotland, upon the Resignation of their Offices*; it was enacted, that it should and might be lawful for his Majesty, his Heirs and Successors, by his Majesty's Sign Manual, to give and grant unto any Person who should have executed the Office of Lord President of the Court of Session, or of the Lord Justice Clerk, or of the Lord Chief Baron of the Court of Exchequer in Scotland, and who should have respectively resigned any such Office, an Annuity or yearly Sum of Money, not exceeding Three-fourth Parts of the Salary appertaining to each such Office at the Period of the Resignation thereof, to commence and to be paid in the Manner and subject to the Conditions mentioned in the said recited Act: And whereas it is reasonable and expedient that Annuities should in like Manner be granted to the Lord Chief Commissioner, and the other

Extending the Provisions of 48 G. 3, c. 145, to the Judges of the Jury Court.

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Commissioners of the Jury Court, upon the Resignation of their respective Offices; and also, that the Successor of every such Commissioner should in like Manner be entitled to have and receive such Salaries and Profits as may arise and become due from the Death or Resignation of his Predecessor; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for his Majesty, his Heirs and Successors, by his Majesty's Sign Manual, to give and grant unto any Person who shall have executed the Office of Lord Chief Commissioner, or of a Commissioner of the Jury Court, as well before as after the passing of this Act, and who shall have respectively resigned any such Office, an Annuity or yearly Sum of Money, not exceeding Three-fourth Parts of the Salary appertaining to each such Office at the Period of the Resignation thereof, to commence and be payable in all respects in the same Manner and subject to the same Conditions as any Annuity is authorized and directed to be granted under and by virtue of the said recited Act, passed in the Forty-eighth Year of the Reign of his present Majesty; and also that the Successor of every such Person, who shall have executed the Office of Lord Chief Commissioner, or of a Commissioner of the Jury Court, shall be entitled to have and receive such Salary as shall have arisen and shall have become due from the Death or Resignation of his Predecessor, in like Manner as if his Letter Patent or Commission had borne Date the Day next subsequent to the Day of the Death or Resignation of his Predecessor.

Buildings to be  
erected for the  
Court, etc.

XL. And whereas permanent Accommodation is required for carrying on the Business of the said Court with proper Convenience for the Judges, and for the Clerks and Officers thereof, and the Buildings necessary and proper for this Purpose may be erected so as to be connected with the Buildings now used for the Courts of Session, Justiciary, and Exchequer in *Scotland*; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for the Lord Chief Baron, and the Barons of the Court of Exchequer in *Scotland*, with the Advice and Consent of the Lord High Treasurer and Lords Commissioners of his Majesty's Treasury for the Time being, to order and direct such necessary and proper Buildings to be erected for the Accommodation of the Jury Court, and to order the Expense thereof to be defrayed out of the Monies that shall arise from any of the Duties and Revenues in *Scotland*, which by several Acts made in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, were charged and made chargeable for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*, and to order such Sums to be paid out of such Duties and Revenues as shall be from Time to Time required for such Expense, to the Trustees acting in the Execution of an Act, passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act for vesting the Stock of the Court of Session in Trustees for the erecting Buildings for the better Accommodation of the College of Justice and a public Gaol in the City of Edinburgh; and for other Purposes therein mentioned*; and such Powers and Authorities are hereby given and granted to such Trustees, for the Purpose of erecting the Buildings hereby directed, as are given to the said Trustees for erecting the Buildings directed by the said last mentioned Act.

48 G. 3, c. 146.

Bodies Politic  
empowered to sell  
and convey for  
the Purposes of  
this Act.

XLI. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the said Trustees to acquire, and for all Bodies Politic, Corporate, or Collegiate, Heirs of Entail, Guardians, Trustees, and all other Persons and Trustees whomsoever, not only for and on behalf of those having the beneficial Interest, whether Persons under Age, Issue unborn, Lunatics, Idiots, or fatuous Persons, or other Person or Persons, and for every other Person or Persons whomsoever

who shall be seised, possessed of, or interested in any Lands, Grounds, and Heritages, which shall be required for the Purposes of this Act, to contract for, sell, and convey the same and every Part thereof unto the said Trustees for the Purposes of this Act; and all such Contracts, Agreements, Sales, Conveyances, and Assurances shall be valid and effectual in the Law to all Intents and Purposes whatsoever, any Law, Statute, Usage, or Custom to the contrary thereof in anywise notwithstanding; and all Bodies Politic, Corporate, or Collegiate, and all Persons whomsoever so conveying as aforesaid, are hereby indemnified for or in respect of any such Sale which he, she, or they, or any of them, shall respectively make by virtue or in pursuance of this Act.

XLII. And be it further enacted by the Authority aforesaid, That all Conveyances and Assurances which shall be made of any Lands or Heritages to the said Trustees for the Purposes of this Act, shall be made according to the following Form, or as near thereto as the Circumstances of the Case will admit :

" I [or we]                                 of                                 in Consideration of the  
Sum of                                 to me [or us] paid, do hereby grant, dispo-  
ne, and convey to                                 all [*describing the Premises to be conveyed*]  
and all my Right, Title, and Interest to and in the same and every  
Part thereof, to hold to the said                                 for the Purposes speci-  
fied in an Act passed in the Fifty-ninth Year of the Reign of his  
Majesty King George the Third, intituled [*here set forth the Title of*  
*this Act.*] In witness whereof I have set my Hand to these Presents,  
written by [*insert the Name and Description of the Writer*] this  
Day of                                 in the Year of our Lord  
before these Witnesses [*insert Names and Descriptions of Witnesses,*  
*who will also subscribe as Witnesses.*]"

**Form of Convey-**  
**ance.**

And all such Conveyances and Assurances shall be registered, within Sixty Days of the Date thereof, in the General Register of Sasines, or in the Particular Register of Sasines of the County of *Edinburgh*, and shall thereupon be valid and effectual in the Law to all Intents and Purposes, and shall be a complete Bar to all other Rights, Titles, Trusts, and Interests, and Incumbrances to, in, or upon the same whatsoever.

XLIII. Provided always, and be it further enacted by the Authority aforesaid, That all and every Body Politic, Corporate, or Collegiate, Trustees, or other Persons hereinbefore capacitated to sell and convey any Lands, Tenements, and other Heritages, or any Owner or Owners, and the Occupier or Occupiers of any Lands, Tenements, or other Heritages required to be taken for the Purposes of this Act, may accept and receive Satisfaction for the Value of such Lands, Tenements, and Heritages, or of any such Interests as aforesaid; and from and immediately after the Time of making and executing such Sale and Conveyance, or any Contract or Contracts for the same, the said Trustees purchasing the same, for the Purposes of this Act, may and shall be at Liberty to enter upon, and from thenceforth for ever to have, take, and use the said Lands, Tenements, and other Heritages, for the Purposes of this Act; and in case the Parties interested in such Lands, Tenements, or Heritages, cannot or do not agree as to the Amount or Value of such Satisfaction, the same shall be ascertained and settled by the Verdict of a Jury as is hereinafter directed.

Satisfaction to be made.

**XLIV.** And for settling all Differences which may arise between the said Trustees and the several Owners of or Persons interested in any Lands, Tenements, or other Heritages which shall or may be taken or used for the Purposes of this Act, be it further enacted by the Authority aforesaid, That if any Body Politic, Corporate, or Collegiate, or any other Person or Persons so interested, for and on his, her, or

**If Parties are dissatisfied, or refuse, or are unable to treat, etc., a Jury to be impannelled to decide the Matter.**

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their Part or Parts, or for or on the Part of any Person or Persons for whom they may hold the same, or Persons as aforesaid, shall refuse to accept such Purchase Money or other Compensation as shall be offered by them the said Trustees, or their Agent by or on their Behalf, shall give Notice thereof in Writing to any Three of the said Trustees within Seven Days after such Offer shall have been made, and the Party or Parties giving such Notice as aforesaid shall therein request the Matter or Matters in dispute may be submitted to the Determination of a Jury; or if any Body Politic, Corporate, or Collegiate, or any other Person or Persons seised or possessed of or interested in any such Lands, Tenements, or Heritages, as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of Absence or Disability cannot agree with the said Trustees, or with any Person or Persons authorized by them, for the Sale and Conveyance of their respective Estates and Interests therein, or cannot be found or known, or shall not produce or evince a clear Title to the Premises they may be in possession of, or to the Interest they shall claim therein, to the Satisfaction of the said Trustees, or of the Person or Persons authorized by them, then and in every such Case the said Trustees shall and they are hereby empowered and required from Time to Time to direct the Sheriff Depute or Substitute of the County of *Edinburgh*, to summon, assemble, and choose a Jury, in such Way and Manner as Juries are summoned, assembled, and chosen in Counties in *Scotland*; and the said Sheriff may order and authorize the said Jury when chosen, or any Three or more of them, to view the Place or Places or Matters or Things in controversy; and such Jury shall upon their Oaths (which Oaths, as well as the Oaths of such Witnesses, the said Sheriff is hereby empowered and required to administer) inquire of, assess, and ascertain, and give a Verdict for the Sum or Sums of Money which shall be paid for the Purchase of such Lands, Tenements, or Heritages, or Compensation for any Interest therein as aforesaid; and the said Sheriff shall give Judgment for such Purchase Money or Compensation so assessed by such Jury; which said Verdict and the Judgment thereupon shall be binding and conclusive to all Intents and Purposes upon all Bodies Politic, Corporate, or Collegiate, and upon all Persons whomsoever, and shall not be subject to any Review, or any Stay or Sist of Execution whatsoever: Provided that Fourteen Days Notice in Writing at the least of the Hour and Place at which such Jury are so required to be returned be given to the Bodies Politic, Corporate, or Collegiate, or to the Person or Persons interested, or claiming so to be, before the Time of the Meeting of the said Sheriff and Jury as aforesaid, by leaving such Notice at the Dwelling House of such Person or Persons, or of the Head Officer of such Body or Bodies Politic, Corporate, or Collegiate, or with some Tenant or Occupier of the Premises respectively intended to be valued; and in each and every Case where a Verdict shall be given for more Money, as a Recompence or Satisfaction for the absolute Sale of any Lands, Tenements, or Heritages, or as a Compensation for any Interest therein as aforesaid, than shall have been previously offered by or on behalf of the said Trustees before the summoning such Jury, and where no Compensation shall have been previously offered in respect thereof by or on behalf of the said Trustees, or where by reason of Absence or other Impediment or Disability, there shall not be found any Person or Persons at hand who may be legally capacitated to contract with and make Conveyances to or receive Compensation from the said Trustees as hereinbefore mentioned, then and in all such Cases all the reasonable Expenses of causing such Value or Compensation to be assessed and awarded as aforesaid shall be settled by the said Sheriff, and be defrayed by the said Trustees, but if any Verdict shall be given for the same Sum that shall have been

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previously offered by or on behalf of the said Trustees, or for a less Sum than shall have been so previously offered, or in case of such Refusal to treat with or make Conveyances to the Trustees by any Bodies Politic, Corporate, or Collegiate, or by any Person or Persons whomsoever who is or are by the Provisions of this Act or otherwise legally empowered to treat and convey or receive such Compensation as aforesaid, then and in all such Cases (except where, by reason of Absence or otherwise, any Person shall have been prevented from treating and agreeing as aforesaid, in which Case all such Costs and Expenses shall be borne and paid by the said Trustees) the reasonable Costs and Expenses of causing such Value or Compensation to be assessed and awarded as aforesaid shall be settled in like Manner to the said Sheriff, and be borne and paid by the Body or Bodies Politic, Corporate, or Collegiate, or by the Person or Persons with whom the said Trustees shall have such Controversies or Disputes; which said Costs and Expenses shall and may be deducted out of the Money so assessed and awarded; and the Payment or Tender of the Remainder of such Sum or Sums of Money shall be deemed and taken to all Intents and Purposes to be Payment or Tender of the whole Sum or Sums so assessed or awarded as aforesaid.

XLV. And be it further enacted by the Authority aforesaid, That all the said Judgments and Verdicts shall be deemed to be and shall become Records of the said Sheriff to all Intents and Purposes whatsoever; and the same or true Copies thereof shall be allowed to be good Evidence; and all Persons shall have Liberty to inspect the same, paying for such Inspection the Sum of One Shilling, and to take Copies thereof, paying for every Copy the Sum of Sixpence for every One hundred Words, and so in proportion for any less Number of Words.

Verdicts to be recorded.

XLVI. And be it further enacted by the Authority aforesaid, That upon Payment or legal Tender of such Sum or Sums of Money as shall have been contracted or agreed for between the Parties, or determined or adjusted by any Jury or Juries in Manner aforesaid, for the Purchase of any such Lands, Tenements, or Heritages, to the Proprietor or Proprietors of such Lands and other Heritages and Premises, or such other Person or Persons as shall be interested therein, or entitled to receive such Money or Compensation respectively, at any Time after the same shall have been so agreed for, determined, or awarded; or if the Person or Persons so entitled or interested, or any of them, cannot be found, or shall refuse to receive the same, or shall not be able to make a good Title to the Premises, to the Satisfaction of the said Trustees, or shall refuse to execute a Conveyance or Conveyances of the Premises which shall be required for the Purposes of this Act; then, upon Payment of the said Sum or Sums of Money into the Bank of Scotland, or the Royal Bank of Scotland, or the British Linen Company, as hereafter directed and required (in case the same shall be requisite), for the Use of such Person or Persons so interested or entitled as aforesaid, it shall be lawful for the said Trustees, and their Agents, Servants, and Workmen, or any other Persons authorized by them in their Behalf, immediately to enter upon such Lands, Grounds, and Heritages respectively, and the Fee simple and Inheritance thereof, together with the yearly Profits thereof, and all the Estate, Use, Trust, and Interest of any Person or Persons therein, shall from thenceforth be vested in the said Trustees, in such Manner as is directed in and by this Act, to and for the Purposes of this Act, for ever; and such Tender, Payment, or Investiture, shall not only bar all Right, Title, Claim, Interest, and Demand, of the Person or Persons to whom the same shall or ought to have been made, but also shall extend to and shall be deemed and construed to bar the Terce of

Power to enter upon and take possession of Land, etc., on payment or Tender of Purchase Monies.

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Application of  
Compensation  
when exceeding  
L.200.

the Wife, and all Right of every other Person, and all Incumbrances whomsoever therein : Provided nevertheless, that before such Payment it shall not be lawful for the said Trustees, or any Person acting under their Authority, to dig into such Lands or Grounds, for the Purpose of erecting the Buildings directed by this Act, without Leave of the respective Owners or Occupiers thereof in Writing under their respective Hands.

XLVII. And be it further enacted by the Authority aforesaid, That if any Money shall be agreed or awarded to be paid for any Lands, Tenements, or Heritages, or for any other Matter, Right, or Interest, of what Nature or Kind soever, purchased, taken, or used by virtue of the Powers of this Act, for the Purposes thereof, which shall belong to any Corporation, Minor, or other Person or Persons under any Disability or Incapacity, as hereinbefore mentioned, such Money shall, in case the same shall amount to or exceed the Sum of Two hundred Pounds, with all convenient Speed be paid into the Bank of *Scotland*, or the Royal Bank of *Scotland*, or the British Linen Company, to be placed to an Account in the Name or Names of such Person or Persons as any Three of the said Trustees shall, by Writing signed by them, direct and appoint, to the Intent that such Money shall be applied, under the Direction and the Approbation of the Court of Session, to be signified by an Order made upon a Petition to be preferred in a summary Way by the Person or Persons who would have been entitled to the Rents and Profits of the said Lands, Tenements, or Heritages, in the Purchase of the Land Tax, or towards the Discharge of any Debt or Debts, or such other Incumbrance, or Part thereof, as the said Court shall authorize to be paid, affecting the same Lands, Tenements, or Heritages, or affecting other Lands, Tenements, or Heritages standing settled therewith, to the same or the like Uses, Intents, or Purposes ; or where such Money shall not be so applied, then the same shall be laid out and invested, under the like Direction and Approbation of the said Court, in the Purchase of other Lands, Tenements, or Heritages, which shall be conveyed to, for, and upon such and the like Uses, Trusts, Intents, and Purposes, and in the same Manner, as the Lands, Tenements, or Heritages, which shall be so purchased, taken, or used as aforesaid, stood, settled, or limited, or such of them as at the Time of making such Conveyance and Settlement shall be existing undetermined and capable of taking effect ; and in the meantime, and until such Purchase shall be made, the Interest or annual Produce of such Money shall from Time to Time be paid, by Order of the said Court, to the Person or Persons who would for the Time being have been entitled to the Rents and Profits of the said Lands, Tenements, and Heritages so hereby directed to be purchased, in case such Purchase or Settlement were made.

When less than  
L.200 and exceeding  
L.20.

XLVIII. Provided always, and be it further enacted by the Authority aforesaid, That if any Money so agreed or awarded to be paid for any Lands, Tenements, or Heritages purchased, taken, or used for the Purposes aforesaid, and belonging to any Corporation, or to any Person or Persons under Disability or Incapacity as aforesaid, shall be less than the Sum of Two hundred Pounds, and shall exceed the Sum of Twenty Pounds, then and in all such Cases the same shall, at the Option of the Person or Persons for the Time being entitled to the Rents and Profits of the Lands, Tenements, or Heritages so purchased, taken, or used, or of his, her, or their Guardian or Guardians, to be signified in Writing under their respective Hands, to be paid into the Bank of *Scotland*, the Royal Bank of *Scotland*, or the British Linen Company, under the Direction and Authority of the Court of Session, in order to be applied in manner hereinbefore directed ; or otherwise the same shall be paid, at the like Option, to Three Trustees,

to be nominated by the Person or Persons making such Option, and approved of by Three or more of the said Trustees, such Nomination and Approbation to be signified in Writing under the Hands of the nominating and approving Parties, in order that such principal Money and the Interest arising thereon may be applied in manner herein-before directed, so far as the Case may be applicable, without obtaining or being required to obtain the Direction and Approbation of the Court of Session.

*Acquisition of  
Lands.*

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XLIX. Provided always, and be it further enacted by the Authority aforesaid, That where such Money so agreed or awarded to be paid as next before mentioned shall be less than Twenty Pounds, then and in all such Cases the same shall be applied to the Use of the Person or Persons who would for the Time being have been entitled to the Rents and Profits of the Lands, Tenements, or Heritages so purchased, taken, or used for the Purposes of this Act, as the said Trustees, or any Three or more of them, shall think fit, or then to his, her, or their Guardian or Guardians, and to and for the Use and Benefit of such Person or Persons so entitled respectively.

When less than  
L.20.

L. And be it further enacted by the Authority aforesaid, That in case the Person or Persons to whom such Sum or Sums of Money shall be so ordered to be paid as aforesaid shall not be able to make a good Title to the Premises, to the Satisfaction of the said Trustees, or any Three of them, or shall refuse to execute such Conveyance or Conveyances; or in case such Person or Persons to whom such Sum or Sums of Money shall be so ordered to be paid as aforesaid cannot be found; or if the Person or Persons entitled to such Lands, Tenements, or Heritages, be not known or discovered; then and in every such Case it shall be lawful for the said Trustees, or any Three or more of them, to order the said Sum or Sums so awarded to be paid into the Bank of Scotland, the Royal Bank of Scotland, or the British Linen Company, to the Credit of the Parties interested in the said Lands, Tenements, or Heritages [describing them], subject to the Order, Controul, and Disposition of the Court of Session; which said Court, on the Application of any Person or Persons making Claim to such Sum or Sums of Money, or any Part thereof, shall be and is hereby empowered, in a summary way of Proceeding, or otherwise, as to the said Court shall seem meet, to order the same to remain in the Hands of the said Banks, or One of them, or to order the same to be laid out and invested in the public Funds, or to order Distribution thereof, or Payment of the Interest or Dividends thereof, according to the respective Estate or Estates, Title, or Interest of the Person or Persons making Claim thereunto, and to make such other Order in the Premises as to the said Court shall seem just and reasonable; and the Cashier or Cashiers of the said Banks respectively, who shall receive such Sum or Sums of Money, is and are hereby required to give a Receipt or Receipts for such Sum or Sums, mentioning and specifying for what and for whose Use the same is or are received to such Person or Persons as shall pay any Sum or Sums of Money into the Bank as aforesaid.

In case of not  
making out Titles,  
or if Persons can-  
not be found,  
purchase Money  
to be paid into the  
Bank;

subject to the Order  
of the Court of  
Session, by Motion  
or Petition.

Cashier of the  
Bank to give a  
Receipt.

LI. Provided always, and be it further enacted by the Authority aforesaid, That where any Question shall arise touching the Title of any Person to any Money to be paid into such Banks in pursuance of this Act, for the Purchase of any Lands, Tenements, or Heritages, or of any Estate, Right, or Interest in any Lands, Tenements, or Heritages to be purchased in pursuance thereof, or to any Bank Annuities to be purchased with any such Money, or to the Dividends or Interest of any such Bank Annuities, the Person or Persons who shall have been in possession of such Lands, Tenements, or Heritages, at the Time of such Purchase, and all Persons claiming under such Person or Persons, or under the Possession of such Person or Persons, shall be deemed

Where any Ques-  
tion shall arise  
touching the Title  
to Money to be  
paid, the Person  
in Possession shall  
be deemed entitled  
thereto.

*Acquisition of  
Lands.*

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The Court may  
order reasonable  
Expenses of Pur-  
chases to be paid  
by the Trustees.

Trustees em-  
powered to resell  
Lands.

and taken to have been lawfully entitled to such Lands, Tenements, or Heritages, according to such Possession, until the contrary shall be shewn to the Satisfaction of the said Court of Session; and the Dividends or Interest of the Bank Annuities to be purchased with such Money, and also the Capital of such Bank Annuities, or the Capital yielding such Interest, remaining in the Hands of any of the said Banks, shall be paid and applied and disposed of accordingly, unless it shall be made appear to the said Court, that such Possession was a wrongful Possession, and that some other Person or Persons was or were lawfully entitled to such Lands, Tenements, or Heritages, or to some Estate or Interest therein.

LII. Provided also, and be it further enacted by the Authority aforesaid, That where by reason of any Disability or Incapacity of the Person or Persons, or Corporation, entitled to any Lands, Tenements, or Heritages, to be purchased under the Authority of this Act, and the Purchase Money for the same shall be required to be paid into the said Banks, or One of them, by the Order of the said Court, and to be applied in the Purchase of other Lands, Tenements, or Heritages, to be settled to the like Uses in pursuance thereof respectively, it shall be lawful for the said Court to order the Expenses of all such Purchases from Time to Time to be made in pursuance of this Act, or so much of such Expenses as the Court shall deem reasonable, together with the necessary Costs and Charges of obtaining such Order, to be paid by the said Commissioners, who shall from Time to Time pay such Sums of Money for such Purposes as the said Court shall direct.

LIII. And whereas the said Trustees may purchase Lands to be made use of for the Purposes of this Act, and it may happen that the whole thereof may not be required for the Purposes of this Act, and it may in such Case become necessary to resell the same; be it therefore further enacted by the Authority aforesaid, That it shall be lawful for the said Trustees, by Deed under the Hands of any Three or more of them, to grant and convey, by way of absolute Sale, for a Consideration in Money, such Lands, Tenements, or Heritages, or any such Part or Parts thereof as shall not be wanted for the Purposes of this Act; and all such Conveyances from the said Trustees shall be valid and effectual, anything in this Act contained, or any other Law, Statute, or Custom to the contrary thereof in anywise notwithstanding; and upon Payment of the Money which shall arise by Sale or Sales of such Lands, Tenements, and Heritages, it shall and may be lawful for the said Trustees to sign and give Receipts for the Money for which the same shall be sold, which Receipts shall be sufficient Discharges to any Person or Persons for the Purchase Money for which such Lands or Buildings shall be so sold, or for so much thereof as in such Receipts shall be acknowledged or expressed to be received; and such Person or Persons shall not afterwards be answerable or accountable for any Loss, Misapplication, or Non-application of such Purchase Money, or any Part thereof: Provided always, that the said Trustees, before they shall sell and dispose of such Lands, Tenements, or Heritages, shall first offer to resell the same to the Person or Persons from whom they shall have purchased the same, or would have been then entitled to in case the same had not been purchased by the said Trustees, the Price at which the same shall be resold being, at the Option of the said Persons, either the Price paid by the said Trustees, or a Price for the same adjusted and settled by a Jury in like Manner as the Price for any Land to be taken in pursuance of this Act, as hereinbefore directed to be settled in case of Difference or Dispute as to the Value thereof; and if such Person or Persons shall not agree, or shall refuse to repurchase the same, it shall and may be lawful to and for any Person or Persons, not interested in the Premises, to make an



*Affidavit*, to be sworn before One of his Majesty's Justices of the Peace for the County where such Lands shall be situate, stating that such Offer was made by or on behalf of the said Trustees, and that such Person or Persons did not agree, or refused to purchase such Lands or Buildings, as the Case may be; and such Affidavit shall in all Courts be sufficient Evidence and Proof that such Offer was made, and not agreed to or refused.

*Repeal and Temporary Provisions.*

LIV. And be it further enacted by the Authority aforesaid, That the several Powers, Authorities, Directions, and Regulations, and all other Matters and Things enacted in the aforesaid Act of the Fifty-fifth Year of the Reign of his present Majesty, excepting in so far as the same are by this Act altered, varied, amended, annulled, or repealed, shall be and the same are hereby continued in Force, in as full and ample Manner as if the same were repeated and re-enacted in this Act, and made a Part thereof; and that Nothing herein contained shall extend or be construed to extend, except as herein enacted, to diminish or invalidate the binding Force and Effect of the Rules and Regulations made under the Authority of the hereinbefore mentioned Act of the Fifty-fifth Year of the Reign of his present Majesty, or the Orders, Directions, or Judgments of the Courts acting under the Authority of the same.

Repeal and saving Clause.

LV. And whereas it is provided by the said Act of the Fifty-fifth Year of the Reign of his present Majesty, that regular Returns should be made, to both Houses of Parliament, of all Proceedings under the said Act, and that Reports should be made of the Number of Issues directed to and tried in the Jury Court: And whereas it is no longer necessary to continue the said Provisions; be it enacted by the Authority aforesaid, That all the Provisions contained in the said Act, respecting the said Returns and Report to Parliament, shall be and the same are hereby repealed.

Provisions of repealed Act respecting Reports to Parliament repealed.

## 59° GEORGII III. REGIS.

### CAP. XLV.

*An Act to explain and amend certain Acts relative to the Court of Session in Scotland.*—[22d June 1819.]

WHEREAS by an Act passed in the Forty-eighth Year of the Reign of his present Majesty, intituled, *An Act concerning the Administration of Justice in Scotland, and Appeals to the House of Lords*, it was enacted, that the Judges or Lords of Session should usually sit in Two Divisions, and the Lord President of the whole Court and Seven of the Ordinary Lords of Session should form One and the First of the said Divisions, and the Lord Justice Clerk for the Time being and Six of the Ordinary Lords of Session should form the other and the Second of the said Divisions: And whereas, by another Act passed in the Fiftieth Year of the Reign of his present Majesty, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*, it was enacted,

48 G. 3, c. 151.

50 G. 3, c. 112.

*Judicial  
Arrangements.*

53 G. 3, c. 64.

In the Case of a Vacancy in the Inner House of either Division, a Judge may be removed from the one Division to the other.

*Infra*, § 3.

that the Three junior Ordinary Judges of the First Division of the Court of Session, and the Two junior Ordinary Judges of the Second Division, should be relieved from Attendance in the Inner House, and should, from and after the passing of the said Act, not sit therein, but should sit as Lords Ordinary in the Outer House: And whereas, by another Act passed in the Fifty-third Year of the Reign of his present Majesty, intituled, *An Act for the better Regulation of the Court of Session in Scotland*, it was enacted, that the Three junior Ordinary Judges of the First Division of the Court of Session, and the Two junior Ordinary Judges of the Second Division of the Court of Session for the Time being, should officiate as permanent Lords Ordinary, in the Manner therein directed: And whereas a Vacancy has arisen in the Second Division of the Court of Session by the Death of One of the Two Ordinary Judges officiating as permanent Lords Ordinary therein, and Vacancies may arise in either of the said Divisions by the Death or Resignation of some One or more of the Judges sitting in the Inner House, as well as by the Death or Resignation of some One or more of the Ordinary Judges officiating as permanent Lords Ordinary therein; and Circumstances may arise which may make it desirable that a Judge sitting in the Inner House of One of the said Divisions should sit in the Inner House of the other of the said Divisions; and it is expedient that the Power of his Majesty should be declared in such Cases: May it therefore please your Majesty that it may be enacted and declared; and be it enacted and declared by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for his Majesty, his Heirs and Successors, upon a Vacancy arising by the Death or Resignation of any of the Judges sitting in the Inner House in either of the said Divisions of the Court of Session, to order and direct, by a Warrant under his Majesty's Sign Manual, that any One of the Judges sitting in the Inner House of the Division where the Vacancy shall not have arisen (if such Judge shall desire it), shall sit in the Division where the Vacancy shall have arisen; and that the Vacancy thus created in the said Division, from which the said Judge shall have been removed, shall be supplied by the senior Ordinary Judge officiating as a permanent Lord Ordinary in the Outer House, who shall thereafter be enabled to sit in the Inner House of the said Division, although such junior Judge shall not have been appointed to sit in the said Division; or if no Judge sitting in the Inner House of the Division where

the Vacancy shall not have arisen, shall desire to sit in the Division where the Vacancy shall have arisen, that the senior Ordinary Judge officiating as a permanent Lord Ordinary in either of the said Divisions shall be enabled thereafter to sit in the Inner House of that Division in which the said Vacancy shall have arisen, although such senior Judge shall not have been originally appointed to sit in the Division where such Vacancy shall happen.

II. And be it further enacted and declared by the Authority aforesaid, That where a Vacancy shall arise in either Division among the Ordinary Judges officiating as permanent Lords Ordinary therein, it shall and may be lawful for his Majesty, his Heirs and Successors, by a Warrant under his Majesty's Royal Sign Manual, to order and direct that the senior of the Ordinary Judges officiating as a permanent Lord Ordinary in the Division where the Vacancy shall not have arisen, if he shall desire it, and if he shall not desire it, then that the next Ordinary Judge officiating as a permanent Lord Ordinary in the Division where the Vacancy shall not have arisen, if such Judge shall desire it, shall sit in the Division where the Vacancy shall have arisen; and where a Vacancy shall arise among the Ordinary Judges officiating as permanent Lords Ordinary in the Second Division, then the junior or last appointed Judge for the Time being, of the Three junior Ordinary Judges of the First Division, shall be appointed in Manner directed by this Act to sit in the Second Division, and so long as he shall continue One of the Two junior Ordinary Judges therein, shall officiate as One of the permanent Lords Ordinary therein, in the Manner directed by the said last-recited Act.

III. Provided always, and be it enacted by the Authority aforesaid, That in the Case of the Removal of any of the said Judges from the one of the said Divisions to the other of the said Divisions, such Judge shall have Rank and Precedence in the Division to which he shall be removed according to and from the Date of his original Appointment to sit in the Division from which he shall be removed.

IV. And be it further enacted by the Authority aforesaid, That in the Case of the junior or last appointed Judge of the First of the said Divisions being removed to the Second Division pursuant to this Act, it shall be competent to the whole Court, or a Quorum thereof, to appoint the other Judges officiating as permanent Lords Ordinary to officiate each Week by Rotation as Ordinaries in the Bill Chamber and in Teind Processes, and other Matters mentioned in the said last-recited Act, in the Manner therein directed in the Case of the Death, Resignation, Sickness, or necessary Absence of such junior or last appointed Judge.

*Judicial  
Arrangements.*

Provision in the Case of a Vacancy among the Judges officiating as permanent Lords Ordinary.

*Rep. by 6 G. 4, c. 120, § 1.*

*See 1 W. 4, c. 69, § 20; 1 & 2 V., c. 118, § 1, 4.*

Provision as to Rank and Precedence.

Provision in case of the junior or last appointed Judge of the First Division being removed.

*Judicial  
Arrangements.*

Provision in the  
Cases of Removal  
under this Act.

This Act and re-  
cited Acts to be  
construed together.

V. And be it further enacted by the Authority aforesaid, That in all other Cases where an Ordinary Judge officiating as a permanent Lord Ordinary shall be removed from the one of the said Divisions to the other of the said Divisions, it shall and may be lawful for the whole Court, or a Quorum thereof, to remit the Processes then depending before such permanent Lord Ordinary in the Manner directed by the said last-recited Act, in the Event of the Death, Resignation, or Removal into the Inner House, of any of the said permanent Lords Ordinary.

VI. And be it further enacted by the Authority aforesaid, That this Act and the said Three recited Acts shall be construed together in the same Manner as if this Act had made Part of the said last-recited Act.

## 1° &amp; 2° GEORGII IV. REGIS.

## CAP. XXXVIII.

[Bill Chamber,  
Teinds, Extracts,  
etc., 1821.]

*An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session, and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts.*—[28th May 1821.]

48 G. 3, c. 151.

50 G. 3, c. 112.

53 G. 3, c. 64.

55 G. 3, c. 70.

WHEREAS an Act was passed in the Forty-eighth Year of the Reign of his late Majesty King George the Third, intituled, *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords*; and an Act was passed in the Fiftieth Year of his said late Majesty's Reign, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*; and an Act was passed in the Fifty-third Year of his said late Majesty's Reign, intituled, *An Act for the better Regulation of the Court of Session in Scotland*; and an Act was passed in the Fifty-fifth Year of his said late Majesty's Reign, intituled, *An Act for better regulating the Formation and Arrangement of the judicial and other Records of the Court of Session in Scotland*: And whereas by a Warrant under the Sign Manual of his Royal Highness The Prince Regent, acting in the Name and Behalf of his Majesty, dated the Eighth Day of February One thousand eight hundred and fifteen, Commissioners were appointed for inquiring into the Duties, Salaries, and Emoluments of the several Officers, Clerks, and Ministers of

Justice of the Courts in *Scotland*, and for reporting what Regulations might be fit to be established respecting the same; which Commissioners have accordingly made certain Reports, and the same have been laid before Parliament: And whereas it is expedient that the said Acts should in certain Particulars be amended, and that certain Regulations should be established, which cannot be effected without the Authority of Parliament; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That upon Bills of Advococation and Suspension, complaining of final Judgments of Sheriffs and other inferior Judges, it shall hereafter be competent either for the Lord Ordinary on the Bills, or for the Court, to remit the Cause to the inferior Judge, with Instructions how to proceed; but no such Remit shall be made, except in the Case of a Suspension of a Decreet in Absence, without hearing Counsel, or receiving a written Answer on the Part of the Respondent.

II. And be it enacted, That the Procedure on Bills of Advococation, complaining of final DECREETS of Removing, shall hereafter be the same as is now established for Bills of Suspensions of such DECREETS.

III. And be it enacted, That in all Cases in which, upon Report of the Lord Ordinary on the Bills to the Lords of either Division, there shall be a Difference of Opinion, and an Equality of Voices, such Lord Ordinary on the Bills shall vote in the Case; and in all other Cases when, in consequence of such Difference of Opinion and Equality of Voices, the Cause or Matter shall be appointed to remain for subsequent Discussion, if the Question shall have previously depended before any Lord Ordinary of the same Division, being at the Time of such Discussion One of the permanent Ordinaries, such Lord Ordinary shall, without regard to any Rotation, be called in to be present at the Discussion, and to vote in the Case.

IV. And be it enacted, That in case of the Death, Sickness, necessary Absence, or legal Declinature of the Lord Ordinary on the Bills during the Period of the Session, but at a Time when the Court is not actually sitting, any One of the permanent Ordinaries, on a due Statement by any of the Clerks of the Bills of such Fact, and of some Urgency in the Case, shall and may pronounce on any Bill which may in such Case be laid before him, such Interlocutor as Circumstances may require, without Prejudice, quoad ultra, to the Provisions of the aforesaid Act, passed in the Fifty-third Year of his said late Majesty's Reign, and also with-

*Bill Chamber.  
Removings.*

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Power to remit, with Instructions on Bills of Advococation and Suspension of final Judgments.

1 & 2 V., c. 86,  
§ 1-6.

Procedure on Bills of Advocations of Removing.

Rep. by 6 G. 4, c. 120, § 44.

Regulations in certain Cases of Equality of Voices.

Am. 48 G. 3, c. 151, § 8.

Am. 58 G. 3, c. 64, § 13.

*Modern Form*, 6 G. 4, c. 120, § 23.  
13 & 14 V., c. 36, § 35.

Provision in case of the Death, Sickness, etc., of the Lord Ordinary on the Bills during Session, but when the Court is not sitting.

See 2 & 3 V., c. 86, § 7.

Clerks of Court.

Court may remit  
Processes of Re-  
duction to be de-  
cided by the Lord  
Ordinary.

*Am. by* 6 G. 4,  
c. 120, § 27; 1 & 2  
V., c. 118, § 2.

*Rev. by* 18 & 14 V.,  
c. 36, § 7, 8.

Principal Clerks of  
Session alone to  
be capable of hold-  
ing the Office of  
principal Clerks of  
the Bills.

Proviso in favour  
of the Clerks of  
Session now in  
Office.

out Prejudice to the Power of either Division, upon legal Declinature of the Lord Ordinary on the Bills when represented to them in any Case, to remit the same to another Ordinary in his Stead.

V. And be it enacted, That it shall be competent and lawful for the Court in either Division, in all Cases when great Avizandum is made with a Process of Reduction, instead of granting Warrant to enroll the same in the next Regulation Roll, to remit to the Fifth or junior Lord Ordinary for the Time, to hear Parties thereon, and to discuss the Reasons of Reduction and other Conclusions of the Libel, without Prejudice to the Power of the Court, on the Ground of Contingency, or any other sufficient Cause, to make such Remit to any of the permanent Lords Ordinary; and the Court is authorized and required to regulate by Act of Sederunt the Time and Manner of enrolling such Processes of Reduction so to be remitted to the Fifth or junior Lord Ordinary, and of calling the same before the Lord Ordinary in pursuance of such Remit.

VI. And be it enacted, That from and after the passing of this Act (with the Exception hereinafter specified), no Person shall be capable to be appointed a principal Clerk of the Bills, except a principal Clerk of Session, and every Person to be hereafter appointed to the said Office, shall personally discharge the Duties thereof, in Manner provided by the said Act, passed in the Fiftieth Year of the Reign of his late Majesty, and shall in respect of such Appointment be entitled to the Salary hereinafter provided, but to no Fees or other Emoluments whatsoever: Provided always, that the Two principal Clerks of Session, who shall be appointed principal Clerks of the Bills, pursuant to this Act, shall not belong to the same Division of the Court at the same Time, but One shall be appointed from each Division.

VII. Provided also, and be it enacted, That nothing herein provided shall be so construed as to compel any of the present principal Clerks of Session to accept the said Office of principal Clerk of the Bills; but every Person to be hereafter appointed a principal Clerk of Session shall, in case of his being subsequently appointed to be One of the principal Clerks of the Bills, be bound to accept the said Office and perform the Duties thereof; and in case, at the Time of any Vacancy arising in the Office of principal Clerk of the Bills, there shall be no principal Clerk of Session willing or bound to accept the same in Terms of this Act, it shall be lawful to his Majesty, his Heirs and Successors, in such Case to appoint a fit and proper Person legally qualified to be appointed a principal Clerk of Session to fill the said Vacancy.

VIII. And be it enacted, That from and after the Time when in Terms of the Regulations contained in the said Act, passed in the Fiftieth Year of the Reign of his late Majesty, there shall be only Two Depute Clerks of the Bills, each of whom would be entitled, by virtue of the said Act, to draw One-sixth Part of the total Fees payable to the Clerks of the Bills, the several Clerks of the Bills shall be entitled thenceforth to receive, from the Collector of the Fee Fund, the annual Salaries undermentioned, payable quarterly, viz. for every principal Clerk of the Bills, not being also a principal Clerk of Session, Six hundred Pounds; for every principal Clerk of the Bills, being also a principal Clerk of Session, Three hundred Pounds; and for each of the Depute Clerks of the Bills, Four hundred and fifty Pounds; and the said Clerks shall be thereafter entitled to no Fee or other Emolument whatsoever, but the whole Fees now legally exigible by the said Clerks, shall thenceforth be paid over on the First *Monday* of every Month to the Collector of the Fee Fund, conformably to an Account thereof to be delivered to him, signed by one or other of the said Depute Clerks, and to the Verity of which the said Depute Clerk shall make Oath, if required.

*Clerks of Court.  
Teind Court.*

Salaries to the  
Clerks of the Bills.

IX. And be it enacted, That from and after the passing of this Act, no Person shall be capable to be appointed principal Clerk of the Commissioners for Teinds, except a Person legally qualified to be appointed a principal Clerk of Session; and no principal or Depute Clerk of the Bills, to be hereafter appointed, shall after his Appointment practise as an Advocate or Agent before the Court of Session, under Pain of Deprivation of Office; nor shall any Person henceforth to be appointed Clerk to the Commission of Teinds, practise as an Advocate or Agent before the Commission of Teinds, under Pain of the like Penalty.

Principal Clerk of  
Teinds, to be an  
Advocate or  
Writer to the  
Signet of Three  
Years standing.

X. And whereas the Provisions heretofore made for the more regularly conducting the Business before the Teind Court, and bringing the Processes of Augmentation and Locality which come before it to a Conclusion, have been found insufficient in Practice, and other Provisions and Regulations are required; be it enacted, That it shall and may be lawful for the Court of Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, to pass any Act or Acts of Sederunt from Time to Time regulating the Form and Manner of Proceedings in all Processes of Augmentation and Locality that may come before them, in such Manner as they may see proper and expedient for the Dispatch of Business, and for bringing such Processes to a final Conclusion: Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the

Provision for the  
better conducting  
the Business of the  
Teind Court.

*Procedure in  
Services.*

Court of Session to his Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the Commencement of the ensuing Session; and no such Act or Acts of Sederunt shall become in force or receive effect, until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

Direction of  
Brieves to the  
Macers in Services  
prohibited.

*Ans. by 1 & 2 V., c.  
86, § 2; 10 & 11  
V., c. 47.*

XI. And whereas it is expedient to abolish the Practice of directing Brieves to the Macers of the Court of Session in certain Services; be it enacted, That in all Cases in which it is now lawful and competent to grant Commission by Authority of the Court of Session, to the said Macers for proceeding in any Service, and in which the Brief issued from Chancery is thereupon directed to the Macers, such Commission shall, from and after the Twentieth Day of *June* in this present Year, be granted, and such Brief issued, according to similar Forms, to the Sheriff Depute of *Edinburgh*, or his Substitute, as Sheriff in that Part specially constituted, whether such Service may relate to Lands and Heritages situated in or beyond the Sheriffdom of *Edinburgh*, or in several Sheriffdoms; and in all Cases of Competition of Brieves, as well as where a Party claiming Right to appear and oppose a Service, shall make such Appearance, either Party may apply for and obtain Advococation of the Brieves to the Court of Session, not only from any inferior Judge, but also from the said Sheriff of *Edinburgh*, acting under special Commission; and the Lord Ordinary, before whom the Letters of Advococation shall be called, shall advocate the Brief, and remit to the Fifth or junior permanent Lord Ordinary for the Time, to be Judge in the said Service, without Prejudice, nevertheless, to the Power of the Court, whether on Declinature or any other Cause shown, to remit to any other Ordinary to be Judge in any Service; and every such Service, whether before the Lord Ordinary on Advococation, or before the Sheriff of *Edinburgh* on special Commission, shall proceed in the same Place, Form, and Manner (unless in so far as the same may hereafter be otherwise regulated in Manner hereinafter authorized) as Services have heretofore proceeded before the Macers, except that the said Sheriff shall not be required to take any Oath de fidei Administratione, as in the Case of the Macers; and that the Practice of applying to the Court for Assessors shall be and is hereby abolished; and the Court of Session is hereby empowered, by any Act or Acts of Sederunt, to make such Rules and Regulations as may be deemed expedient for altering and amending the Form and Manner of issuing of Brieves and executing the same, and of conducting the Procedure in such Services; and for



every such Service, deduced before the said Sheriff on Commission, he shall be entitled to a Fee of Five Guineas on every Service in Lands whereof the valued Rent is upwards of Two thousand Pounds Scots, and in every Service of a Peer, and of Two Guineas in every other Service.

*Expenses of Judicial Establishment.*

XII. And be it enacted, That it shall not be lawful to any Person to be Clerk to any such Service before the Lord Ordinary on Advocation, or before the Sheriff of *Edinburgh* on Commission, unless he be a Writer to the Signet; and the Clerk to every Service whatsoever of a retourable Brieve shall, along with the Verdict, deliver or cause to be delivered into Chancery, to be preserved, subject to the Orders of the Lord Clerk Register, the original Claim of Service, Minutes of the Proceedings, and Depositions of the Witnesses; and no Retour of any Service shall be issued without such previous Delivery.

Writers to the Signet to be Clerks to such Services.

*Supra*, § 11.

XIII. And whereas Expenses are occasionally incurred under the Authority of the Court, in making up Reports for the Information and by Order of the Houses of Parliament, as well as in other Matters connected with the Administration of Justice, for the Payment of which no Fund has been hitherto provided; be it enacted, That the net Amount of all such Charges shall from Time to Time be paid on the Order of the Barons of Exchequer, on an Account of the same being presented to them, certified under the Signature of the Lord President of the College of Justice, out of the Monies charged by certain Acts made in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed, or to be allowed, for keeping up the Courts of Session, Justiciary, and Exchequer.

Provision for contingent Expenses incurred under Authority of the Court.

XIV. And whereas it is expedient that fixed Salaries should be paid to the Keepers of the Inner House Rolls, and the Clerks of the Judges, instead of the Fees now exigible by them; and also that certain Allowances should be granted for providing Liferent Annuities to them, payable on the Death or Resignation of the Judges to whom they are respectively attached; be it enacted, That from and after the Twentieth Day of *June* in this present Year, there shall be payable by the Collector of the Fee Fund to the Keepers of the Inner House Rolls, who are also Clerks to the Lord President and Lord Justice Clerk respectively, a Salary of Five hundred Pounds Sterling each per annum, and to the Clerks of the Thirteen Ordinary Judges a Salary of Three hundred Pounds Sterling each per annum, payable quarterly; and none of the said Keepers or Clerks shall thenceforth be entitled to any Fee or other Emolument whatsoever; but the whole Fees now legally exigible by

Keepers of the Inner House Rolls and Clerks of the Judges to receive Salaries.

*Clerks of Court,  
etc.*

them shall be received by them respectively, and paid over on the First *Monday* of every Month to the Collector of the Fee Fund, conformably to signed Accounts to be delivered to him, and to the Verity of which they shall make Oath, if required by the Accountant of the Fee Fund: Provided always, that it shall be lawful to the Court, by any Act or Acts of Sederunt (which they are hereby empowered to make for that Purpose), to authorize and direct any other Mode of Collection of the said Fees, or of any Part thereof, which may be deemed more expedient, so as the whole of such Fees may in the most easy and convenient Manner be paid over to the Collector of the said Fund.

Annual Allowance  
to Keepers of  
Inner House Rolls,  
etc.

XV. And be it enacted, That from and after the Twentieth Day of *June* in this present Year, an annual Allowance of One hundred Pounds Sterling for each of the Keepers of the Inner House Rolls, being as aforesaid also Clerks of the Lord President and Lord Justice Clerk respectively; and a like Allowance of Fifty Pounds Sterling for each of the Clerks of the Thirteen Ordinary Judges, shall be paid by the said Collector to such Person or Persons as shall be named and appointed to receive the same by the said Court, by their Act or Acts of Sederunt from Time to Time; which Allowances, when so received, shall, under the Authority of the Court, be invested, for forming a Fund for the purpose of providing eventual Liferent Annuities as aforesaid, and thereafter applied for the said Purpose, all in such Manner as shall be directed and enjoined by the said Act or Acts of Sederunt, which the said Court is hereby authorized and required to make to that Effect.

Duties of Keeper  
of the Outer House  
Rolls to be per-  
formed by Clerks  
of Eight Judges.

XVI. And be it enacted, That after the Death or Resignation of the present Keeper of the Outer House Rolls, the Duties of that Office shall be performed by the Clerks of the Eight Judges who are not permanent Ordinaries, according to a weekly Rotation to be established among them by the Direction or with the Approbation of the Court; and the Fees now legally exigible by the said Keeper shall thereafter be received by them each in his Turn, and paid over weekly to the Collector of the Fee Fund, to whom a printed Copy of the Rolls of the Week shall at the same Time be delivered for the Satisfaction of the Accountant; and the said Collector shall from Time to Time thereafter defray the necessary Expense of Paper and Printing for the said Rolls, according to Accounts thereof to be duly certified by any Two or more of the said Clerks.

Extracts to be pre-  
pared by Extrac-  
tors to be ap-  
pointed.

XVII. And be it enacted, That so much of the said Act passed in the Fiftieth Year of his said late Majesty's Reign as provides that the Six Assistants of the principal Clerks of Session shall prepare the abridged Forms of Extracts

therein directed to be observed, and as provides Salaries to such Six Assistants in respect of the Preparation thereof, shall, from and after the Twentieth Day of *June* in this present Year, be repealed; and all Extracts whatsoever which are now in pursuance of the said recited Act prepared by the said Assistants, shall thenceforth be prepared by one or other of Four Extractors, to be appointed in manner hereinafter directed, and their Successors in Office, and shall be authenticated by the Signature of the Extractors by whom the same shall have been prepared respectively, in the same Manner and to the same Effect as such Extracts are now authenticated by the Signature of a principal Clerk of Session; and the Forms of Extracts enjoined by the said Act to be used, shall be so far altered.

XVIII. And be it enacted, That the Duplicates of all Decrets for the Record, and also all Abbreviates of Decrets of Adjudication, which have been heretofore signed in compliance with the Act of Regulations, in the Year One thousand six hundred and ninety-five, by the Lords Ordinary pronouncing Decree, as well as those Abbreviates of Decrets of Adjudication which have been heretofore signed, in compliance with an Act of Sederunt in the Year One thousand seven hundred and ninety-three, by the principal Clerks of Session, shall, from and after the Twentieth Day of *June* in this present Year, be authenticated by the Signature of the Extractors respectively by whom the Decrets shall be prepared and signed.

XIX. And be it enacted, That the Nomination of each Extractor shall be made by the said principal Clerks jointly, the senior Clerk having, in case of Equality, a casting Voice; and every such Nomination shall be made without receiving therefor any Price, Gratuity, or valuable Consideration of any Kind, and shall be forthwith reported to the Court; and the said Extractors shall hold their Offices during the Pleasure of the said principal Clerks, or the major Part of them, the senior Clerk having as above directed a casting Voice in case of Equality; and the said Extractors shall give Obedience to such Regulations as may be made by the principal Clerks of Session from Time to Time, for establishing and preserving Order and Regularity in the Performance of their Duties, and for the faithful Performance of which Duties the principal Clerks of Session shall be responsible; and the said principal Clerks shall be bound as heretofore to maintain and exercise a constant and regular Superintendence, Control, and Direction regarding the official Conduct of the Extractors, and all other subordinate Officers in their Department, and for that Purpose at least One of them shall attend personally for such.

*Extracts. Adjudication.*

*Rep.* 50 G. 8, c. 112, § 15.

*Infra*, § 18, 24, 25.

Duplicates for the Record, and Abbreviates of Adjudications, to be signed by the Extractors.  
19 & 20 V., c. 91, § 6.

Extractors to be appointed by the principal Clerks of Session.

Extracts and Unextracted Processes.

Time as shall be necessary, at least Three Days in every Week, in the Register Office; and the said principal Clerks shall also prepare and deliver to the Lord Clerk Register or his Deputy, at the Commencement of every Winter and Summer Session, a Report setting forth such Matters as have occurred in the intermediate Period, relating to their Department, and appearing to be worthy of Notice, with a View to the public Benefit.

## Salaries to Extractors.

XX. And be it enacted, That there shall be paid to each of the said Extractors, by the Collector of the Fee Fund, a Salary of Two hundred and fifty Pounds Sterling per annum, and they shall not be entitled to any Fee or other Emolument whatever, except the ordinary Charge for copying, paid for copying at the Time in the Court of Session.

## Compensation to Preparers of Extracts.

XXI. And whereas by the aforesaid Act, passed in the Fiftieth Year of his said late Majesty's Reign, specific Compensations were provided for Seventeen Extractors whose Offices were abolished, including in that Number the Six Assistants of the principal Clerks of Session, being also Extractors, but a Deduction of Two hundred Pounds per annum was made from the Amount of the Compensations ascertained to be due to each of the said Assistants, which Deduction was made in Consideration of their Appointment to be Preparers of Extracts, with a Salary to each of Two hundred Pounds: And whereas it is just and equitable that when the said Salaries are withdrawn, the corresponding Deduction from the Compensation should cease to operate; be it therefore enacted, That an Annuity of Two hundred Pounds Sterling shall, from and after the Twentieth Day of *June* in this present Year, be paid to each of the Six Persons now filling the joint Offices of Clerks Assistant and Preparer of Extracts, upon the Order of the Barons of Exchequer, in the same Manner and at the same Times with the specific Compensations allowed by the said Act.

## Principal Clerks Assistants to be Members of the College of Justice.

XXII. And be it enacted, That the Keeper of the Judicial Records of the Court of Session, and the Six Assistants of the principal Clerks of Session for the Time, shall, in virtue of their respective Appointments, be Members of the College of Justice.

## Act of Sederunt to be made with regard to unextracted Processes.

XXIII. And whereas by the said Acts passed in the Fiftieth and Fifty-fifth Years of his said late Majesty's Reign, certain Regulations were made with regard to unextracted Processes, which have not been found effectual; and it is expedient that the Court of Session should be empowered to make a new Regulation as to that Matter, and also to provide for and facilitate an Arrangement of extracted Decrees, according to the Dates of the last Inter-

locutors in the Processes; be it enacted, That the said Court shall be empowered by Act or Acts of Sederunt from Time to Time to make such Regulations with regard to the Disposal and Arrangement of Processes remaining unextracted, whether final Decree may or may not have been pronounced therein, as shall be deemed fit and expedient; and to order and direct, if they shall see fit, that all extractable Processes shall be extracted in such Form and Manner as may seem expedient, and to make Provision for Payment out of the Fee Fund of the Charge, at the ordinary Rate for copying, for making the Record Copies of such Decrees as the Parties may not require to be extracted; and to make Regulations with regard to the Manner and the Person by whom Extracts of Decrees shall be authenticated after the Transmission of Processes to the Keeper of the Records, and also with regard to the Manner and the Person by whom Extracts shall be authenticated, of all registered Deeds and probative Writings, Charters, Precepts, and Instruments whatsoever issued after the Transmission thereof to the General Register House; all which Orders and Regulations shall be valid and effectual; anything in the said Two Acts contained to the contrary notwithstanding: Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the Commencement of the ensuing Session, and no such Act or Acts of Sederunt shall become in force or receive effect until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

XXIV. And be it enacted, That from and after the passing of this Act, the Copies of printed Papers and Interlocutors and Minutes of the Court, appointed by the said Act passed in the Fiftieth Year of his said late Majesty's Reign, to be received in Evidence when an Appeal is taken to the House of Lords, and the authenticated Copies of Proceedings in any Cause which the Assistants of the principal Clerks of Session are by the said Act required to furnish, shall and may be certified by the Signature either of One of the said Clerks, or of One of the said Assistants, for whom the principal Clerk shall be responsible.

XXV. And be it enacted, That the Fee payable to the said Assistants, for comparing the said Copies of printed Papers, shall be Fourpence for each printed Page, and no more: Provided always, that the said Fee shall in no One Case, of whatever Length the said Copies may be, exceed

*Extracts and Certified Copies.*

*A. of S.* 21 Dec. 1822; 11 Feb. 1829; 26 Feb. 1831; 24 Dec. 1838.

Certified Copies for Appeals, etc., may be signed by the Clerks Assistants.

50 G. 3, c. 112, § 11.  
*Infra*, § 25.

Fee for comparing certified Copies for Appeals.

*Registers, etc.*

Ten Pounds in the whole: And provided also, that the said Fee is exclusive of the ordinary Charge of copying Interlocutors and Minutes, according to the Rate for copying paid at the Time in the Court of Session; and the Fee payable to the said Assistants, for preparing Bonds granted by the Purchasers of Estates judicially sold for the Prices thereof, shall be One-half of the Fee which would be payable to a professional Agent for similar Bonds on occasion of a voluntary Sale, and no more.

Keepers of the Register of Deeds, etc., to be appointed by the Lord Clerk Register.

XXVI. And be it enacted, That from and after the passing of this Act, the principal and assistant Keepers of the Register of Deeds, probative Writings and Instruments of Protest, recorded in the Books of Council and Session, shall be under the immediate Control and Direction of the Lord Clerk Register and his Deputy for the Time, in the Performance of the Duties of their Offices; and whenever a Vacancy shall arise in any of the said Offices, the same shall be supplied by the Nomination of the Lord Clerk Register, and every such Nomination shall be forthwith reported to the Court; and the Extracts or Office Copies of all such Deeds, probative Writings, and Instruments of Protest, before the Transmission thereof to the General Register House, shall be authenticated by the Subscription of One or other of the said Keepers, in the same Manner and to the same Effect as such Extracts have heretofore been authenticated by the Signature of a principal Clerk of Session.

Indexes of certain Registers to be formed.

XXVII. And whereas it is expedient that the Keepers of the several Registers of Records of Seisins, Reversions, Abbreviates of Adjudications, Inhibitions, and Deeds, and probative Writs recorded in the Books of Council and Session, should form alphabetical Indexes of the Persons and Matters to which those Records relate, for the Purposes of easy Reference to the same respectively; be it enacted, That it shall and may be lawful for the Court of Session, by any Act or Acts of Sederunt, from Time to Time to regulate the Form and Manner in which such Indexes shall be formed and rendered accessible to the Public, and to provide such Remuneration for the Persons who shall be employed to form the same, as may be just and suitable, by the Imposition of a Fee on the Registry of the Writings to which the said Indexes shall bear Reference, not exceeding One-fourth Part of the ordinary Charge paid for copying at the Time in the Court of Session: Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Par-

liament at or immediately after the Commencement of the ensuing Session; and no such Act or Acts of Sederunt shall become in force or receive effect until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

XXVIII. And be it enacted, That the Fees upon Services heretofore payable to the Macers shall be abolished from and after the Twentieth Day of *June* in this present Year, and that the Fees heretofore collected and accounted for to them, by the Clerks of the Bills and by the Keeper of the Outer House Rolls, shall be thereafter accounted for, and paid over weekly, to the Collector of the Fee Fund; and the said Collector shall retain those Fees which have heretofore been received by him on account of the Macers, and paid by him to them; and the other Fees now legally exigible by the said Macers, or any of them, shall remain so exigible, and shall, along with all Gratuities receivable by them or any of them, in their Capacity of Macers, form a common Fund of Division among the whole Seven Macers of the Court, including the One by hereditary Right or his Deputy, instead of being as heretofore exclusively divisible among Four of their Number; and the Fees now legally exigible by the Two Macers of the Court of Teinds (being also Macers of the Court of Session), shall in like Manner form a common Fund of Division among the whole Seven Macers, who shall all equally be liable to perform the Duty of Macers without Distinction, whether in the Court of Session, Court of Teinds, or elsewhere; and the Salaries now payable to the said Macers, of Ten Pounds each to Four of their Number, shall, from and after the said Twentieth Day of *June* in this present Year, cease and determine, and the said Seven Macers shall thereafter receive a Salary of One hundred and twenty Pounds each, payable in the same Manner and at the same Times in which Salaries of One hundred and twenty Pounds each are now paid and payable to Three of their Number; the Salaries herein provided for them being in lieu and stead thereof.

XXIX. And be it enacted, That the Remuneration of the Collector of the Fee Fund, including the Expense which may become necessary of a Clerk or Assistant, shall, from and after the Twentieth Day of *June* in this present Year, be fixed at the Rate of Four Pounds per centum on the whole Sums received by him, until such Sums shall amount to Eleven thousand Pounds Sterling in each Year, with the Addition of a Rate of Two Pounds per centum on the further Sums received by him in such Year beyond Eleven thousand Pounds Sterling, and that in lieu and stead of the Remuneration fixed by the said Act passed in

*Salaries and Fees.*

Fees of Macers regulated, and Salaries provided for them.

Remuneration to the Collector of the Fee Fund.

Auditor of Court.

Disposal of Balance of Fee Fund, and Deficiency to be supplied.

Fees may be diminished or abolished by the Court; and a Copy of the Order transmitted to the Secretary of State, to be laid before Parliament.

Office of Auditor of the Court of Session to be made permanent.

the Fiftieth Year of his said late Majesty's Reign : Provided always, that in case in any Year the said Remuneration at the Rate aforesaid shall fall short of Six hundred Pounds, the said Collector shall, in such Year, be entitled to retain the full Sum of Six hundred Pounds, as the Allowance for his Trouble and for the Expense aforesaid; and every Person filling the said Office shall, in virtue of his Appointment, be a Member of the College of Justice.

XXX. And be it enacted, That any Balance remaining in the Hands of the Collector, on the Twentieth Day of *December* in any Year, shall be disposed of in Manner described by the said Act, passed in the Fiftieth Year of his Majesty's Reign; and in case of the Insufficiency of the said Fund at any Time for the Payment of the Sums which the said Collector is required to pay, the Deficiency shall be supplied in the Manner now practised in pursuance of the said Act.

XXXI. And be it enacted, That in case it shall at any Time appear that the Fees by which the said Fund is created, produce annually a Sum materially exceeding the Amount required, it shall be competent to the said Court to diminish the Amount of, or altogether to abolish any of the said Fees; anything in this or any other Act to the contrary notwithstanding: Provided always, that if by any Diminution or Abolition the Fund shall become insufficient for the legal Demands upon it, the said Court shall restore the said Fees in whole or in part, so as to keep the Fund as nearly as may be equal to the Burthens thereon: Provided further, that a Copy of every Order or Act of Sederunt to be made by the said Court, diminishing the Amount of the said Fees or abolishing any of the same, or restoring such Fees, shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a Copy of the same to be laid before each House of Parliament, at or immediately after the Commencement of the then next Session thereof; and upon the Expiration of Three Calendar Months after the First Day of such Session, but not sooner, every such Fee shall become diminished, or be abolished, or be restored, in the same Manner as if the same had been diminished or abolished, or restored, by Authority of Parliament.

XXXII. And whereas the Office of Auditor of Accounts in the Court of Session was established by Acts of Sederunt of the Lords of Council and Session, and the Fees payable to and exigible by the Auditor were afterwards regulated and established by the aforesaid Act passed in the Fiftieth year of the Reign of his late Ma-



jesty, by which it was provided, that in the Event of there being an Auditor of each Division, such Fees should be equally divided between the Two Auditors : And whereas the said Office has been found useful and beneficial ; be it therefore enacted, That the said Office of Auditor of Accounts shall hereafter be and remain a permanent Office in the Court of Session, and the Person at present filling the said Office shall continue to hold the same, *ad vitam aut culpam*, with Power nevertheless to his Majesty, his Heirs and Successors, to appoint another Auditor of Accounts, so that there may be an Auditor of Accounts for each Division whenever it shall be certified to his Majesty, his Heirs and Successors, by the Lord President of the Court of Session and the Lord Justice Clerk, that in the Opinion of the Court the due Dispatch of the Business of the said Office shall require that there shall be Two such Auditors, every such Auditor being a fit and proper Person, who shall have practised for not less than Three Years as a Writer to the Signet, or as a Member of the Incorporation of Solicitors before the Supreme Courts in *Scotland* ; and every Person filling the said Office shall, in virtue of his Appointment, be a Member of the College of Justice, and shall hold the same, *ad vitam aut culpam* ; and that upon every Vacancy in the said Office, by Death, Resignation, or otherwise, it shall be lawful to his Majesty, his Heirs and Successors, to nominate and appoint a fit and proper Person, of the Description aforesaid, to supply such Vacancy ; and no Person holding the said Office shall under Pain of Deprivation of Office practise either directly or indirectly as an Agent before the said Court of Session : Provided always, that in the Event that Two Auditors of Accounts shall be appointed, it shall and may be lawful for the Court of Session, and such Court is hereby empowered by an Act or Acts of Sederunt, to regulate the Manner in which the Business of the said Office shall be performed by the said Two Auditors, and the Manner in which the Fees granted by the said recited Act shall be divided between them, anything in the said recited Act to the contrary notwithstanding : Provided further, that a Copy of every such Act of Sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a Copy thereof to be laid before each House of Parliament, at or immediately after the Commencement of the then next Session ; and upon the Expiration of Three Calendar Months after the First Day of such Session, but not sooner, such Act of Sederunt shall become in force in the same Manner as if the Regulations prescribed therein had been made by the

Auditor of Court.

Decrees in Absence.

During temporary Indisposition, etc., a Person to be appointed to discharge the Duties of Auditor.

Decrees in Absence not to be extracted without the Account of Expenses being taxed by the Auditor.

*Act. by 13 & 14 V., c. 36, § 29.*

*Fees of Practitioners regulated by A. of S. 19 Dec. 1835; 17 July 1841; and 7 July 1858.*

Compensation to certain Officers.

Fund from which Compensation shall be made.

Authority of Parliament: Provided nevertheless, that in case the present Auditor or any Auditor henceforth to be appointed, shall be unable to discharge the Duties of the said Office, by reason of temporary Indisposition or Absence, it shall and may be lawful for the said Court to appoint a fit and proper Person, though continuing to practise as an Agent before that Court, to discharge the Duties of such Auditor during the Period of such temporary Indisposition or Absence.

XXXIII. And be it enacted, That from and after the passing of this Act, it shall not be lawful to extract any Decree for the random Sum of Expenses concluded for in the Summons; and that in all Cases in which Decree is pronounced in Absence of the Defender or Defenders, an Account of Expenses shall be lodged in Process, and taxed by the Auditor, and that a Report thereon by the Auditor shall be a sufficient Warrant and Authority to the Extractor to fill up the Amount of Expenses to be awarded against the Defender or Defenders in the extracted Decree, without the said Report being brought under the Consideration of the Lord Ordinary, unless by his own Direction, or that of the Auditor, or on the Motion of any Party interested; and for the taxing of all such Accounts, in Cases of Decrees in Absence, the Auditor shall be entitled to charge a Fee of Five Shillings, and no more, when the Amount of the Account shall not exceed the Sum of Ten Pounds Sterling; and when the Amount of the Account shall exceed that Sum, he shall be entitled to charge according to the Rates of Fees specified and contained in the Schedule annexed to the aforesaid Statute passed in the Fiftieth Year of the Reign of his late Majesty.

XXXIV. And be it enacted, That if any of the Keepers of the Inner House Rolls, or Clerks of the Judges, or other Officers of Court, shall make Application to the said Barons, and shall make it appear that he has suffered or will suffer pecuniary Loss from the Operation or Effect of any of the aforesaid Regulations, beyond the Salaries allowed and Fees reserved by this Act, due Consideration being had of the Circumstances of each individual Case, the said Barons are hereby authorized and required to examine into such Claims, and to decide whether any or what Compensation is due to all or any of the said Officers.

XXXV. And be it enacted, That every Sum of Compensation to be awarded under the Authority of this Act, shall be paid and payable upon the Order of the said Barons, in such Manner and at such Time or Times as they shall direct, free and clear from all Taxes and Deductions whatsoever, out of the Monies charged or made chargeable by

several Acts made in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer; and every Order for Compensation so made as aforesaid, shall be laid before Parliament within One Month after the Commencement of the Session next ensuing the making of the same: Provided always, that no such Decision of the said Barons shall be final and conclusive until Three Months after a Copy of the Order of such Barons for Compensation shall have been laid before Parliament.

*Compensation.*

#### 4° GEORGII IV. REGIS.

CAP. LXXXV.

*An Act for empowering Commissioners to be appointed by his Majesty to inquire into the Forms of Process in the Courts of Law in Scotland, and the Course of Appeals from the Court of Session to the House of Lords.*—[18th July 1823.] [Spent.]

#### 5° GEORGII IV. REGIS.

CAP. LXXXVII.

*An Act to authorize the Proprietors of Entailed Estates in Scotland to grant Provisions to the Wives or Husbands and Children of such Proprietors.*—[21st June 1824.] [Ext. by 16 & 17 V., c. 94, § 12.—  
See 10 G. 3, c. 51;  
6 & 7 W. 4, c. 42;  
11 & 12 V., c. 86;  
16 & 17 V., c. 94.]

§ I. Provision to be granted to a Wife.—II. Provision to be granted to a Husband.—III. Only two Liferent Provisions to be subsisting at One Time.—IV. Provision in certain Cases to Children.—V. Provision settled in consideration of Marriage, Death of Children before Granter not to affect the Provision.—VI. Where Provisions to Children granted to the full Extent, no further Provisions to be granted till the former are diminished, etc.—VII. Excess in Provisions granted to be regulated by the Court of Session.—VIII. No Security or Provision to affect the Fee.—IX. After Death of the Granter of Provisions to Children, Heir succeeding to Estate to make Payment thereof, with Interest.—X. Heir sued for Provisions to Children to be discharged on conveying One-third of clear Rents.—XI. Granting Provisions not to infer Contravention, etc.—XII. Act not to diminish more extensive Powers.—XIII. The Heir in Possession not to be deprived of more than Two-third Parts of the clear annual Income.

*Qualification and  
Exemption.*

6° GEORGII IV. REGIS.

CAP. XXII.

[Enrolment of  
Jurors, 1825.  
Amended by 7 G.  
4, c. 8.]

*An Act to regulate the Qualification and the Manner of enrolling Jurors in Scotland, and of choosing Jurors on Criminal Trials there; and to unite Counties for the Purposes of Trial in Cases of High Treason in Scotland.—*  
[20th May 1825.]

Qualification of  
Jurors.

6 Ann. c. 26, § 6.

Who shall be  
exempted from  
being returned or  
serving on Juries.

**W**HEREAS it is expedient that the Qualification of Persons in *Scotland* liable to serve as Jurors should be fixed and ascertained, and that the Mode of making up Rolls or Lists of Persons in *Scotland* liable to serve as Jurors should be regulated, and that the Mode of choosing Jurors in Criminal Trials there should be altered, and that Provisions should be made for uniting Counties for the Purposes of Trial in Cases of High Treason there: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Man, except as hereinafter excepted, being between the Ages of Twenty-one and Sixty Years, residing in any County or Stewartry in *Scotland*, being qualified to serve as a Juror in Terms of an Act passed in the Sixth Year of the Reign of her Majesty Queen Anne, intituled, *An Act for settling and establishing a Court of Eschequer in the North Part of Great Britain called Scotland*; videlicet, every such Man at the Time of the Trial on which he may be required to serve having and being seised in his own Right, or in the Right of his Wife, of Lands or Tenements, of an Estate of Inheritance, or for his or her Life, within the County or Shire, City or Place, from whence the Jury is to come, of the yearly Value of Five Pounds at the least, or shall be then worth in Goods, Chattels, and personal Estate, the Sum of Two hundred Pounds Sterling at least, shall be qualified and shall be liable to serve on Juries in *Scotland*, before any Court there, Civil or Criminal, competent to try Causes by Jury.

II. Provided always, and be it enacted, That all Peers, all Judges of the Supreme Courts, including the Judge Admiral and Commissaries of *Edinburgh*, all Sheriffs and Stewarts of Counties or Stewartries, all Magistrates of Royal Burghs, all Ministers of the Established Church, and all other Ministers of Religion, who shall have duly taken and subscribed the Oaths and Declaration required by Law,

and whose Place of Meeting shall be duly registered, and all Parochial Schoolmasters, also all Advocates practising as Members of the Faculty of Advocates, all Writers to the Signet practising as such, all Solicitors practising before any of the Supreme Courts, all Procurators practising before any Inferior Court, having severally taken out their annual Certificates, all Clerks or other Officers of any Court of Justice actually exercising the Duties of their Offices, all Gaolers or Keepers of Houses of Correction, all Professors in any University, all Physicians and Surgeons duly qualified as such, and actually practising, all Officers in his Majesty's Navy or Army in full Pay, all Officers of Customs or Excise, all Messengers at Arms, and other Officers of the Law, shall be and are hereby freed and exempted from being returned, and from serving upon Juries.

III. And be it further enacted, That the Sheriff of each County, and the Stewart of each Stewartry in *Scotland*, shall, on or before the First Day of *January* One thousand eight hundred and twenty-six, make up a Roll of Persons within his County or Stewartry respectively, who are qualified as aforesaid, and liable to serve as Jurors; and the Names and Designations of all such Persons shall be entered in a Book, to be called "The General Jury Book," to be kept in the Sheriff or Stewart Clerk's Office of each County or Stewartry, and to be open on all lawful Days to the Inspection and Examination of any Person who shall require such Inspection, on Payment of a Fee of One Shilling.

IV. And be it further enacted, That as soon as such Roll or List of Jurors, qualified as aforesaid, shall have been made up and inserted in the said General Jury Book, the Sheriff and Stewart of every County and Stewartry in *Scotland* shall select therefrom the Names of all Persons qualified to be Special Jurors, in Terms of an Act passed in the Fifty-fifth Year of the Reign of his late Majesty King *George the Third*, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending of Trial by Jury to Civil Causes*; and such Names so selected shall be entered in a Book to be called "The Special Jury Book," to be kept in the Sheriff or Stewart Clerk's Office of each County or Stewartry, and to be open for Inspection as herein directed with regard to the General Jury Book; and the Persons whose Names shall be entered in such Special Jury Book shall be liable to serve as Special Jurors in all Civil Causes ordered to be tried by Special Juries, and on all Criminal Trials as hereinafter directed; provided always, that the Names of Persons so selected as aforesaid for Special Jurors shall, notwithstanding thereof, remain in the said General Jury Book.

*General and Special  
Rolls.*

Rolls of Jurors,  
when and how to  
be made up.

Provision for Special  
Juries.

55 G. 3, c. 42,  
§ 20-27 & § 36.

See 59 G. 3, c. 35,  
§ 26.

Home Circuit.

Provision with  
respect to the  
Counties of Edin-  
burgh and Lanark.

3 G. 4, c. lxxviii.

Sheriffs of Had-  
dington and Lin-  
lithgow to send  
Lists to the Sher-  
riff of Edinburgh.

Numbers to be  
returned by the  
Sheriff of each  
County.

V. Provided always, and be it enacted, That the Sheriff of the County of *Edinburgh*, in entering the Names of Jurors, as well in the General as in the Special Jury Book as aforesaid, shall divide the same into Three separate Parts, one containing the Names of Persons residing in the City of *Edinburgh* and its Environs, in so far as the same are comprehended within the Bounds of Police, as defined by an Act passed in the Third Year of the Reign of his present Majesty, intituled, *An Act for watching, cleansing, and lighting the Streets of the City of Edinburgh and adjoining Districts, for regulating the Police thereof, and for other Purposes relating thereto*; and another Part containing the Names of those residing in the Town of *Leith* and its Environs, as comprehended within the Bounds of the Police thereof; and a third Part containing the Names of those residing in the Rest of the County of *Edinburgh*; and that the Sheriff of the County of *Lanark* shall in like manner divide the Names of Jurors as aforesaid into Two Parts, the one containing the Names of Persons residing in *Glasgow*, including *Anderston*, *Gorbals*, and the *Calton*, and the other containing the Names of those residing in the Rest of the County of *Lanark*.

VI. And be it enacted, That the Sheriffs of *Haddington* and *Linlithgow* shall, on or before the Eighth Day of *January* One thousand eight hundred and twenty-six, transmit certified Copies of the Lists, both General and Special, so made up by them, to the Sheriff of *Edinburgh*; from which shall be taken the Names of Jurors when required, as directed by this Act.

VII. And be it enacted, That when the Attendance of Jurors is required for Trials before the High Court of Justiciary at *Edinburgh*, or before the Court of Exchequer, or Judge Admiral, or in the Jury Court when held in *Edinburgh*, Notices, Writs, or Precepts shall be issued from the said respective Courts to the Sheriff of *Edinburgh*, specifying the Number of Jurors required; and the said Sheriff shall thereupon return a List taken from the said General Jury Book, in the Order in which they therein appear, subscribed by him, containing the Number of Persons required, which Return, when made to the High Court of Justiciary or to the Judge Admiral, where Forty-five Jurors are required, shall contain Twenty-four for the City of *Edinburgh*, Six for the Town of *Leith*, Six for the Remainder of the County of *Edinburgh*, Four for the County of *Linlithgow*, and Five for the County of *Haddington*, or as near as may be in these Proportions, according to the Number required, more or less than Forty-five: Provided always, that in all Criminal Trials One-third of the Number required, or if the Number required cannot be divided

equally into Thirds, a Number as nearly as can be to a Third, more or less, at the Discretion of the Sheriff, shall be Persons qualified as Special Jurors, and shall be distinguished in the Return accordingly: Provided, that in the Event of the List so to be taken from the General Jury Book not being found to contain the said Proportion of Special Jurors, the deficiency shall be supplied by Names to be taken from the Special Jury Book; and this Rule shall in like Manner be observed in regard to Returns from all other Counties.

*Other Circuits, etc.*

VIII. And be it enacted, That when the Attendance of Jurors at the Circuits is required, Notice shall be given by the Clerk of Court to the Sheriff of the Counties, or Stewards of the Stewartries within the Circuit, of the Number of Jurors required; and each Sheriff or Stewart shall thereupon return to the said Clerk a List subscribed by him, taken from the General and Special Jury Books aforesaid, containing the Number of Persons so required; which Return, where Forty-five Jurors are required, shall contain Ten for the County of *Berwick*, Seven for the County of *Peebles*, Eight for the County of *Selkirk*, Twenty for the County of *Roxburgh*, Thirty for the County of *Dumfries*, Fifteen for the Stewartry of *Kirkcudbright*, Ten for the County of *Wigton*, Thirty-five for the County of *Ayr*, Ten for the County of *Renfrew*, Twenty-one for the City of *Glasgow*, *Anderston*, *Gorbals*, and the *Calton*, Nine for the Rest of the County of *Lanark*, Five for the County of *Dumbarton*, Ten for the County of *Bute*, Thirty-five for the County of *Argyle*, Twenty-five for the County of *Stirling*, Ten for the County of *Clackmannan*, Ten for the County of *Kinross*, Fifteen for the County of *Perth*, Fifteen for the County of *Fife*, Fifteen for the County of *Forfar*, Ten for the County of *Kincardine*, Twenty-five for the County of *Aberdeen*, Ten for the County of *Banff*, Six for the County of *Elgin*, Six for the County of *Nairn*, Eighteen for the County of *Inverness*, Nine for the County of *Ross* and *Cromarty*, Three for the County of *Sutherland*, and Three for the County of *Caithness*; and wherever a greater Number than Forty-five Jurors shall be required, the Numbers in the Return aforesaid shall be increased according to the Proportions above specified: Provided always, that it shall be competent for the Court of Justiciary, as Circumstances may require, to alter these Proportions by Act of Adjournal.

Number of Jurors required to attend at the Circuits.

IX. And be it enacted, That in all Criminal Trials in any Inferior Court, the Clerk of such Court shall be furnished with Names from the Jury Books of the County in which the Court is held, containing the Number of Per-

Provision for Jurors in Inferior Courts.

Lists of Jurors.

Order in which  
Names of Jurors  
are to be taken.

Lists of Jurors to  
be renewed.

Jurors in the case  
of Landed Men.

Jurors as returned  
to serve on Trials.

Penalty on Sheriffs  
making up Lists  
and returning  
Jurors contrary to

sons required, One-third being Persons qualified as Special Jurors.

X. Provided always, and be it enacted, That the Sheriffs and Stewarts, in all Returns of Jurors made by them to any Court whatsoever, shall take the Names in regular Order, beginning at the Top of the Lists in the said Jury Books, in each of the Counties and Districts foresaid respectively, as required; and as often as any Juror shall be returned to them, they shall mark or cause to be marked, in the said General Jury Book of their respective Counties or Stewarts, and also in the Special Jury Book in the Case of Special Jurors, the Date when any such Juror shall have been returned to serve; and in all such Returns they shall commence with the Name immediately after the last in the preceding Return, without regard to the Court to which the Return was last made, and taking the subsequent Names in the Order in which they shall have been entered, as herein directed, and so to the End of the Lists respectively.

XI. And be it enacted, That the Sheriff or Stewart of every County or Stewartry in *Scotland* shall prepare, in the Manner herein directed, new and correct Lists of Jurors, in such Time as the same may be completed, and entered in Books as aforesaid, to be deposited in the Sheriff or Stewart Clerk's Office, before the First Lists shall have been completely gone through; and so soon as the whole Names contained in any of the former Lists shall have been returned to serve as Jurors, the Sheriff or Stewart shall proceed to take the Names of those required from the new Lists so prepared, beginning at the Top, and proceeding regularly to the End as herein directed; and as often as and immediately before any List shall have been completely gone through, a new List shall be prepared and entered in Books as aforesaid, and be made use of in the Manner herein directed.

XII. And be it enacted, That where a Person shall by Law be entitled to the Privilege of having a Majority of Landed Men for Jurors on his Trial, the Sheriff or Stewart, when required, shall make a Return of Names of Landed Men, in the Order in which such Names appear in the Books aforesaid, so that a Majority of the Jurors contained in such Return shall be Landed Men.

XIII. And be it enacted, That the Lists returned as herein directed by the Sheriffs and Stewards to the Clerks of Court, and none other, shall be used for the several Trials for which the same shall have been required.

XIV. And be it enacted, That every Instance of wilful and unwarranted Departure on the Part of any Sheriff from the Provisions of this Act in regard to the making up of Lists, and of returning of Jurors to any Court, shall subject



such Sheriff in a Penalty of Fifty Pounds, to be recovered by summary Complaint before the High Court or Circuit Court of Justiciary; One Half of which Penalty shall belong to his Majesty, and the other Half to the Party suing for the same: Provided always, that no Irregularity in making up the Lists as herein directed, or in transmitting the same, or in the Warrant of Citation, or in summoning Jurors, or in returning any Execution of Citation, shall constitute an Objection to Jurors whose Names shall be served on any Person accused of any Crime, reserving always to the Court to judge of the Effect of an Objection founded on any felonious Act by which Jurors may be returned to serve in any Case contrary to the Provisions of this Act.

XV. And be it enacted, That it shall and may be lawful for the Lord Justice Clerk, or any One of the Lords Commissioners of Justiciary, and they are hereby authorized and empowered at any Time to direct to be summoned as Jurors to serve on any Criminal Trial in the High Court or Circuit Court of Justiciary, any such Number of Persons exceeding Forty-five, as may be deemed necessary; and it is hereby provided, that the Warrants for summoning Jurors shall only require the Signature of One of the said Judges, and it shall not be necessary to annex a Copy of the Signature of such Judge to the List of Assize served on the Accused.

XVI. And be it enacted, That it shall be lawful for each Person on Trial before any Criminal Court to challenge Five of the Jurors, and also for the Prosecutor to challenge Five of the Jurors in all, for any One Trial, without being obliged to assign any Reason therefor; and which Challenge shall be made when the Name of each Juror is drawn as herein directed, and shall not afterwards be allowed, and such Challenge shall of itself disqualify the Person or Persons challenged from serving as a Juror or Jurors on such Trial: Provided always, that of the Five special Jurors to be chosen, not more than Two shall be allowed to be so challenged by each Person accused, or by the Prosecutor: Provided always, that such Challenges without Reason assigned shall nowise deprive a Person accused, or the Prosecutor, of the Right respectively competent to them to object to any Juror or Jurors on Cause shewn, but declaring that if such Objection shall be founded on the Want of sufficient Qualification as provided by this Act, such Objection shall only be proved by the Oath of the Juror objected to; and it shall not be competent to take any Objection to any Juror after he shall have been sworn to serve.

XVII. And be it enacted, That in all Criminal Trials by Jury, the Number of Jurors to be returned by the

*Selection of  
Jury.*

the Provisions of  
this Act.

No Irregularity in  
Lists to be an  
Objection to  
Jurors.

Provision where  
more than Forty-  
five Jurors shall be  
required.

Peremptory Chal-  
lenges allowed.  
*Rep. 3 G. 4, c. 85.*

Number of Jurors  
to be returned by

*Impanneling Jury.*

Sheriffs, and how  
to be chosen for  
Trials.

Sheriffs and Stewarts to the Criminal Court shall be Forty-five, unless otherwise directed, as herein mentioned; and the Jurors for the Trial of any Case shall be chosen in open Court, by Ballot from the Lists of Persons summoned, and served upon the Accused; and for that Purpose the Clerk of Court shall cause the Name and Designation of each Juror to be written on a separate Piece of Paper or Parchment, all the Pieces being of the same Size, and shall cause the Pieces to be rolled up, as nearly as may be, in the same Shape, and the Names of the special Jurors shall be put together into one Box or Glass, and the Remainder into another, and being respectively mixed, the Clerk shall draw out the said Pieces of Parchment or Paper One by One from both Boxes or Glasses, in the Proportion of One from the Box containing the Names of the special Jurors and Two from the other Box; and if any of the Persons whose Names shall be so drawn shall not appear, or shall be challenged, with or without Cause assigned, and set aside, then such farther Number shall be drawn until the Number required for the Trial shall be made out; and the Persons so drawn and appearing, and being sworn, shall be the Jury to try the Accused, and their Names shall be taken down and recorded in the Minute Book kept by the Clerk; but providing that when Challenges are made and Jurors set aside, their Places shall be filled up with other Names, by drawing by Ballot as aforesaid from the Box or Glass containing the Description of Jurors challenged respectively: Provided that where the Accused is a Landed Man, and a Return of Jurors made accordingly, a Majority of the Jury for Trial shall be taken by Ballot from the List of Landed Men returned by the Sheriff, as herein directed, and the Remainder from the List of Jurors not special, subject always to Challenge as aforesaid.

Jurors once chosen may continue to serve.

XVIII. And be it enacted, That the Jurors chosen for any particular Trial may, when that Trial is disposed of, without any new Ballot, serve on the Trials of other Persons accused, provided such Persons and the Prosecutor consent thereto, and provided also, that the Names of such Jurors are contained in the List of Assize served on the Accused, and that such Jurors are duly sworn to serve on each successive Trial.

Jurors may be excused.

XIX. And be it further enacted, That the several Courts foresaid shall respectively have Power to excuse any One or more Jurors from serving on any Trial or Trials, the Grounds of such Excuse being stated in open Court.

Provision as to Verdicts.

XX. And be it enacted, That all Verdicts in the High Court or Circuit Court of Justiciary, and in the Court of the Judge Admiral, and of any inferior Judge, whether the

Grand Juries.

Jury are unanimous or not, and whether upon a Consultation in the Jury Box or after having retired and been enclosed, shall be returned by the Mouth of the Chancellor of the Jury, unless when the Court shall direct written Verdicts to be returned; and the same Rules shall apply in regard to the receiving of such Verdicts, as are observed in the Case of unanimous Verdicts in the Court of Justiciary: Provided always, that in all Cases of Verdicts being returned by the Mouth of the Chancellor of the Jury, where the Jury shall not be unanimous in their Verdict, the Chancellor shall announce the same, so that an Entry thereof may be made in the Record; and provided also, that when in such Case a Jury is enclosed, none of the Jurors shall be allowed to separate or to hold Communication with other Persons, until their Verdict shall have been returned in their Presence by the Mouth of their Chancellor.

XXI. And whereas in Cases of High Treason, and Misprisions of High Treason, a sufficient Number of Jurors for the Grand and Petty Juries cannot be had in some Counties of *Scotland*, and in others there is no suitable Court House, or proper Means for conducting Trials in such Cases; be it therefore enacted, That in all Cases of High Treason or Misprision of High Treason in *Scotland*, under any Commission of Oyer and Terminer that shall be issued by his Majesty, the Counties of *Edinburgh*, *Haddington*, and *Linlithgow* shall be held to be one County, under the Description of the County of *Edinburgh*, whereof the Sheriff Depute of *Edinburgh* shall be held to be Sheriff; the Counties of *Roxburgh*, *Berwick*, *Selkirk*, and *Peebles* shall be held to be one County, under the Description of the County of *Roxburgh*, whereof the Sheriff Depute of *Roxburghshire* shall be held to be Sheriff; the County of *Dumfries* and the Stewartry of *Kirkcudbright* shall be held to be one County, under the Description of the County of *Dumfries*, whereof the Sheriff Depute of *Dumfriesshire* shall be held to be Sheriff; the Counties of *Ayr* and *Wigton* shall be held to be one County, under the Description of the County of *Ayr*, whereof the Sheriff Depute of *Ayrshire* shall be held to be Sheriff; the Counties of *Argyle* and *Bute* shall be held to be one County, under the Description of the County of *Argyle*, whereof the Sheriff Depute of *Argyleshire* shall be held to be Sheriff; the Counties of *Lanark*, *Dumbarton*, and *Renfrew* shall be held to be one County, under the Description of the County of *Lanark*, whereof the Sheriff Depute of *Lanarkshire* shall be held to be Sheriff; the Counties of *Stirling*, *Clackmannan*, and *Kinross* shall be held to be one County, under the Description of the County of *Stirling*, whereof the Sheriff

Union of Counties  
for Trials in Cases  
of High Treason.

*Grand Juries.*

Depute of *Stirlingshire* shall be held to be Sheriff; the Counties of *Perth, Forfar, and Fife* shall be held to be one County, under the Description of the County of *Perth*, whereof the Sheriff Depute of *Perthshire* shall be held to be Sheriff; the Counties of *Aberdeen, Banff, and Kincardine* shall be held to be one County, under the Description of the County of *Aberdeen*, whereof the Sheriff Depute of *Aberdeenshire* shall be held to be Sheriff; the Counties of *Inverness, Ross and Cromarty, Elgin and Nairn, Sutherland and Caithness*, and the Stewartries of *Orkney and Zetland*, shall be held to be one County, under the Description of the County of *Inverness*, whereof the Sheriff Depute of *Inverness-shire* shall be held to be Sheriff: And it is hereby provided and declared, that it shall and may be lawful for any such Commission of Oyer and Terminer to sit in any Town or Place in any of the several Counties so held to be one County, whereof the County in which the Treason or Misprision of Treason may have been committed is one, and there to inquire into and determine all Treasons and Misprisions of Treason committed in any of the several Counties so held to be one County, in the same Way as such Commission might inquire into and determine any Treasons or Misprisions of Treason committed in the Place or County in which such Commission may so sit; and upon Precepts being issued by any such Commission of Oyer and Terminer, to any of the foresaid Sheriffs or their Substitutes respectively of *Edinburgh, Roxburgh, Dumfries, Ayr, Argyle, Lanark, Stirling, Perth, Aberdeen, or Inverness*, such Sheriff or his Substitute shall be entitled to require that certified Copies of all Lists of Jurors made up within the several Counties of which he is to be held as Sheriff be transmitted to him, and he shall thereupon return such a Number of qualified Persons to serve on Grand and Petit Juries as shall be required pursuant to the said Commission; and the said Sheriffs shall in virtue of said Precepts give Notice to all Sheriffs, Justices of Peace, chief Constables, Ministers, and Officers of the said Counties, to do and execute such Things as shall be required of them; for all which Purposes, and for performing whatever else may be required of them by the said Commission, the Warrant of any such Sheriff or his Substitute shall be equally good and effectual within the said several Counties of which he is hereby declared to be Sheriff, as if such Warrant had applied only to the particular County over which the Jurisdiction of such Sheriff in other respects extends: Provided always, that nothing in this Act contained shall be held to apply to Trials of High Treason or Misprision of High Treason, save and except in so far as relates to the Union of Counties hereinbefore made.

XXII. And be it enacted, That an Act passed in the Third Year of the Reign of his present Majesty, intituled, *An Act to allow peremptory Challenge of Jurors in Criminal Trials in Scotland*, shall be held as repealed from and after the First Day of *January* One thousand eight hundred and twenty-six, when this Act, and the several Clauses, Provisions, and Regulations herein contained, shall commence and take effect.

*Repeal.*

8 G. 4, c. 85, repealed.

## 6° GEORGII IV. REGIS.

### CAP. LXXXVI.

*An Act to provide for the Erection of certain Courts and Offices of Justice in Scotland.*—[5th July 1825.] [Spent.]

## 6° GEORGII IV. REGIS.

### CAP. XCI.

*An Act to repeal so much of an Act passed in the Sixth Year of his late Majesty King George the First, as relates to the restraining several extravagant and unwarrantable Practices in the said Act mentioned; and for conferring additional Powers upon his Majesty, with respect to the granting of Charters of Incorporation to Trading and other Companies.*—[5th July 1825.]

[Regulates the Privileges of Incorporations.]

§ I. 6 Geo. 1, Cap. 18, recited. Parts of recited Act as to raising Subscriptions and transferring Shares of Stock, and, in such Undertakings, acting as corporate Bodies, etc., repealed. Act not to affect Suits now pending.

§ II. And be it further enacted, That in any Charter hereafter to be granted by his Majesty, his Heirs or Successors, for the Incorporation of any Company or Body of Persons, it shall and may be lawful, in and by such Charter, to declare and provide, that the Members of such Corporation shall be individually liable, in their Persons and Property, for the Debts, Contracts, and Engagements of such Corporation, to such Extent, and subject to such Regulations and Restrictions as his Majesty, his Heirs or Successors, may deem fit and proper, and as shall be declared and limited in and by such Charter; and the Members of such Corporation shall thereby be rendered so liable accordingly.

Members of Corporations incorporated by Charter to be individually liable.

See Table II., p. 88-91; and 19 & 20 V., c. 47.

*Division of the  
Court.*

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## 6° GEORGII IV. REGIS.

CAP. CXX.

[Judicature Act, 1825.—See St. 1672, c. 16; Act of Reg. 29 April and 2 Nov. 1695; June 1696; A. of S. Consolidation Act, 11 July 1828.]

*An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland.*—[5th July 1825.]

4 G. 4, c. 85.

WHEREAS it is expedient that certain Alterations should be made in the Forms of Proceeding in the Courts of Law in *Scotland*, and sundry Regulations established for the better expediting of Business in those Courts: And whereas certain Acts were passed in the Reign of his late Majesty, and in the Reign of his present Majesty, concerning the Administration of Justice in *Scotland*, and Appeals to the House of Lords; and for the better regulating of the Court of Session in *Scotland*; and for extending Trial by Jury to Civil Causes: And whereas an Act was passed in the Fourth Year of the Reign of his present Majesty, intituled, *An Act for empowering Commissioners, to be appointed by his Majesty, to inquire into the Forms of Process in the Courts of Law in Scotland, and the Course of Appeals to the House of Lords*: And whereas, pursuant to the said last-mentioned Act, his Majesty did name and appoint by his Royal Sign Manual certain Persons to inquire into the Forms of Process in the Courts of Law in *Scotland*, and to report on sundry Matters particularly therein set forth: And whereas the said Commissioners so appointed have made a Report to his Majesty upon the Subject Matter upon which they were so directed to report, which Report has been laid before the Two Houses of Parliament: And whereas it is expedient that the before-mentioned Acts should in certain particulars be altered and amended, and that certain Regulations should be established for the expediting of Business before the Courts of Law in *Scotland*, and for extending Trial by Jury in Civil Causes, which cannot be effected without the Authority of Parliament: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Eleventh Day of *November* next to come, the Seven junior Ordinary Judges of the Court of Session shall be relieved from Attendance in the Inner House, and shall not sit therein, unless in so far as is hereinafter provided, but shall act as Lords Ordinary in the Outer House, to perform the Business which by the subsisting Acts and Usages belong

Altering the Division of the Court of Session;

to the Office of Lords Ordinary in the Outer House; and the Lord President, and Three of the senior Ordinary Judges of the Court of Session, shall form the Inner House of the First Division, and the Lord Justice Clerk, with the remaining senior Ordinary Judges, shall form the Inner House of the Second Division; and the Provisions of an Act passed in the Fiftieth Year of the Reign of his late Majesty, intituled, *An Act for abridging the Forms of extracting Decrees in the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*; and also of an Act passed in the Fifty-third Year of the Reign of his late Majesty, intituled, *An Act for the better regulating of the Court of Session in Scotland*; and also of an Act of the First and Second of his present Majesty's Reign, intituled, *An Act for establishing certain Regulations respecting certain Parts of the Proceedings of the Court of Session*, in so far as the same may be found inconsistent with the Regulations above expressed, shall be and the same are hereby repealed: Provided always, that the Judges who now sit in the Inner House of either Division shall not be affected by this Enactment, except with their own Consent; and therefore the Number of Judges who are to form the Inner House of either Division, and of Lords Ordinary officiating in the Outer House, shall remain as at present, until, either by the Consent of the present Judges, or by new Appointments of Judges, the Enactment may be carried into Effect.

*Summons and Defences.*

and repealing  
50 G. 3, c. 112,  
(\$ 29, 30.)

58 G. 3, c. 64,  
(\$ 1, 6, 7;)

and 1 & 2 G. 4,  
c. 88.

See also 48 G. 3,  
c. 151, § 1-11.

But the Judges  
who now sit in  
the Inner House  
not to be affected  
by the foregoing  
Enactment with-  
out their own  
Consent.

II. And be it further enacted, That from and after the said Eleventh Day of *November* next, in all ordinary Actions in the Court of Session, the Pursuer or Pursuers shall, in the Summons, set forth in explicit Terms the Nature, Extent, and Grounds of the Complaint or Cause of Action, and the Conclusions which, according to the Form of the particular Action, the said Pursuer or Pursuers shall by the Law and Practice of *Scotland* be entitled to deduce therefrom; and in like Manner, the Defender or Defenders shall in the Defences state in explicit Terms every Defence, both dilatory and peremptory, on which he or they means or mean to rely, and shall in particular meet the Statement of Facts and the Conclusions deduced from them in the Pursuer's Summons, either by denying the Facts therein stated, or by admitting the same, and in Answer setting forth in explicit Terms the Facts on which the said Defender or

Proceedings for  
the preparing of  
ordinary Causes  
for Trial or Judg-  
ment.

*Summons.*

*Am. by* 18 & 14 V.,  
c. 86, § 1.

*Id.* § 15, 18, 19.

*Defences.*

13 & 14 V., c. 86,  
§ 1.

*Infra*, § 8, 6.

II. Macbrair, 22 March 1826, 2 W. & S. p. 66.—Ramage, 27 May 1828, 6 S. 853.—Ewing's Tr. 25 Feb. 1829, 7 S. 464.—Ferguson, 11 March 1829, 7 S. 580.—Campbell, 9 July 1830, 8 S. 1089.—Gillies, 11 Jan. 1831, 9 S. 257.—Laidlaw, 11 March 1831, 9 S. 579.—Guthrie, 27 Feb. 1833, 11 S. 465.—Christie, 19 June 1833, 11 S. 744.—Hunter, 2 Feb. 1854, 16 D. 441.—United Mining, etc. Co. 13 June 1860, 22 D. 1185.

Dilatory Defences.

Production of Writings founded on.

18 & 14 V., c. 86, § 8. *Infra*, § 8. *A. of S.* 11 July 1828, § 64, 55.

No Judgment to be pronounced till the Record be made up and closed.

*Infra*, § 5, 10.

*Signing of Judgment*, *St.* 1828, c. 18.

Of the Disposal of the dilatory Defences.

*As to Calling and Enrolment*, see *A. of S.* 8 Aug. 1829, § 6, 7.

*As to Reductions*, see 18 & 14 V., c. 86, § 7, 8; *A. of S.* 11 July 1828, § 36.

Expenses.

*Reclaiming*. 18 & 14 V., c. 86, § 11, 12.

Defenders found, subjoining a Summary of the Pleas in Law which are to be maintained by such Defender or Defenders.

III. And be it further enacted, by the Authority aforesaid, That along with the Summons and with the Defence, the Parties shall respectively produce the Deeds or Writings on which they respectively found, so far as the same are in their Custody, or within their Power.

IV. And be it further enacted, That in ordinary Causes where the Defender shall make Appearance, and neither Party shall abandon the Cause, neither the Lord Ordinary officiating in the Outer House, nor the Court, shall proceed to give Judgment upon the Merits in the Cause, until the respective Averments of the Parties in Fact, and their Pleas in Matter of Law, shall, as hereinafter directed, be set forth on the Record, and the Record made up and authenticated in Manner hereinafter appointed.

V. And be it further enacted, by the Authority aforesaid, That it shall be the duty of the Lord Ordinary, at the first calling of the Cause before him, to hear the Parties on the dilatory Defences, with Power to reserve Consideration on such dilatory Defences as require Probation, until the peremptory Defences shall be pleaded, and the Record adjusted in the Manner hereinafter directed; and if the Lord Ordinary shall sustain the dilatory Defences, or any of them, to the effect of dismissing the Action, he shall at the same Time determine the Matter of Expenses; but if, on the contrary, the said Ordinary shall repel the dilatory Defences, the Cause shall then, with the Exception hereinafter to be mentioned, proceed in its due Course of Preparation, without any separate Interlocutor being pronounced respecting Expenses, reserving this Part of the Expense to be disposed of along with the Rest of the Expense in the final Decision of the Cause; and the Judgment of the Lord Ordinary on the dilatory Defences shall be final, unless the Pursuer, where the Defences have been sustained and the Action dismissed, shall, within Twenty-one Days from and after the Date of the Lord Ordinary's Judgment, apply by a Note in Manner hereinafter directed, to have such Judgment reviewed by the Judges of the Inner House, or unless, in the Case where the Lord Ordinary shall have

III. *Peter*, 28 Dec. 1826, 5 S. 193.—*Brodie*, 6 July 1827, 5 S. 900.—*Clyne*, 9 July 1828, 6 S. 1109.—*Fraser*, 28 Nov. 1833, 12 S. 188.—*Independent West Middlesex Co.* 11 June 1840, 2 D. 1058.

IV. *Harmood*, 18 Feb. 1828, 6 S. 582.

V. *Learmonth*, 28 Feb. 1829, 7 S. 492.—*Johnstone*, 28 Jan. 1830, 8 S. 882.—*Mackenzie*, 15 May 1830, 8 S. 751.—*Mackdonald*, 1 Dec. 1830, 9 S. 104.—*Ross*, 14 Jan. 1831, 9 S. 275.—*Rutherford*, 18 Dec. 1830, 9 S. 232.—*Dundee Harbour Trs.* 5 Dec. 1848, 11 D. 181.—*North British Banking Co.* 8 June 1850, 13 D. 966.—*Sinclair*, 17 July 1860, 22 D. 1475.



repelled the Defences, the Defender shall, at the Time of pronouncing Judgment as aforesaid, give Notice of his Intention to bring the Judgment under Review, in which Case the Lord Ordinary, instead of proceeding with the Preparation of the Cause, shall forthwith give Judgment for the Expense of that preliminary Discussion; and the Defender shall then be entitled, at any Time within Twenty-one Days from the Date of the Interlocutor, to apply by Note to the Inner House for a Review of the Lord Ordinary's Judgment; and if the Defender shall not avail himself of the Right thus to bring the Judgment of the Lord Ordinary under Review, an interim Decree, with Expense of Extract, shall be allowed to go out for the Expenses for which Judgment shall have been given as aforesaid; and in reviewing the Lord Ordinary's Judgment, and adhering to or altering the Interlocutor by him pronounced, the Court shall also dispose of the Matter of Expenses relative to that preliminary Discussion; and if the Interlocutor of the Lord Ordinary repelling the Defence shall be adhered to, an interim Decree shall be pronounced for the Expenses decreed for by him, with the additional Expense in the Court, if such shall be allowed, on which interim Decree Execution may proceed; and it shall not be competent to

*Dilatory Defences,  
etc.*

*Appeal.*

VI. And be it further enacted, That where no dilatory Defence shall have been stated, or in case all dilatory Defences have been finally repelled, the Lord Ordinary shall proceed to examine into the Correctness of the Summons and of the peremptory Defences; and if it shall appear to the Lord Ordinary, that the Grounds of Action, as set forth in the Summons, are in Terms not sufficiently positive and clear, or the Conclusion not regularly or legally deduced according to the Form and Nature of the Action, and the Laws and Practice of *Scotland*, he may either dismiss the Action, decreeing for Expenses, and reserving to the Pursuer the Right to bring a new Action, or order an Amendment of the Libel, and give interim Decree against the Pursuer for the Expenses occasioned by the incorrect Form of the Summons; on which interim Decree, if neces-

Examination by the Lord Ordinary into the Correctness of the Summons and Defences.

*Supra*, § 2.

18 & 14 V., c. 86, § 2.

*A. of S.* 11 July 1828, § 56.

VI. Charles, 28 Feb. 1826, 4 S. 506.—Hutchison, 10 July 1828, 6 S. 1180.—Paterson, 20 Feb. 1830, 8 S. 573.—Miles, 25 Jan. 1831, 9 S. 331.—Inglis, 18 May 1831, 9 S. 599.—Miller, 4 Feb. 1832, 10 S. 295.—Whyte, 18 Dec. 1834, 13 S. 215.—Anderson, 20 May 1835, 13 S. 807.—Stewart, 21 Nov. 1837, 16 S. 86.—Graham, 12 Dec. 1837, 16 S. 212.—Gilchrist, 17 Nov. 1838, 1 D. 87.

*Completion of Record.*

Of Defences peremptory.

*Review; Supra,*  
§ 5.  
13 & 14 V., c. 36,  
§ 11.

The Record to be completed.

*Am. by* 13 & 14 V.,  
c. 36, § 3.

Otherways to put in Condescendences and Answers.

Order for Condescendence and Answers.

*Am. by* 13 & 14 V.,  
c. 36, § 1, 2.  
*A. of S.* 11 July  
1828, § 57.

Nature and Form of the Condescendence and Answers.

*Id.* § 105-106.

sary, Execution may proceed forthwith; and in like Manner, if it shall appear to the Lord Ordinary that the Defender has not set forth his peremptory Defences or Exceptions in Terms sufficiently explicit in point of Fact, and with due Correctness in point of Law, the Lord Ordinary may order Defences more satisfactory and correct to be given in, and give Decree against the Defender for the Expense occasioned by his imperfect or evasive Defences; and the Expenses awarded in this preliminary Adjustment of the Summons and Defences, when an amended Summons or additional Defences shall be ordered, shall, at lodging such amended Summons or Defences, be paid over to the Clerk for Behoof of the Pursuer or of the Defender, as the Case may be, without which the amended Summons or Defences shall not be received; and the Lord Ordinary's Determination, thus dismissing the Action, or ordering an Amendment of the Libel, or more satisfactory Defences, with Expenses, shall be final, unless within Twenty-one Days from the Date of the Interlocutor Application shall be made, as hereinafter directed, to have the Interlocutor reviewed by the Inner House.

VII. And be it further enacted, That where the Lord Ordinary shall be satisfied that the Summons and Defences are in point of Fact sufficiently explicit, and correctly deduced in point of Law, and that no further Disclosure of Facts or of Pleas is necessary for the due Preparation of the Cause for Trial, he shall require the Parties to state positively whether they are willing to hold the Summons and Defences as containing their full and final Statement of Facts, and Pleas in Law; and if they agree so to do, then the Clerk shall set forth in a Minute their Assent to that Effect, which shall be signed by the Counsel on each Side, and the Record shall forthwith be completed as herein-after directed.

VIII. Provided always, and be it further enacted, That where the Parties do not agree to hold the Summons and Defences as setting forth fully the Facts and Pleas respectively founded on; or where the Lord Ordinary shall think fit, he shall order the Pursuer or Defender, as the Case may be, to give in, the one a Condescendence, the other an Answer or mutual Condescendence, setting forth without Argument the Facts which they aver and offer to prove in support of the Summons and Defences; and in such Condescendence, Answers, or mutual Condescendences, the

VIII. and IX.—Mackenzie, 13 Feb. 1827, 5 S. 339.—Donaldson's Tr. 23 Jan. 1831, 9 S. 363.—Watson, 13 Dec. 1834, 13 S. 196.—Miller, 17 Feb. 1835, 13 S. 433.—Fyfe, 21 May 1835, 13 S. 809.—Bathgate, 7 March 1840, 2 D. 811.—Harvey, 28 June 1839, 1 D. 1137.

Parties shall, in substantive Propositions, and under distinct Heads or Articles, set forth all Facts and Circumstances pertinent to the Cause of Action, or to the Defence, and which they respectively allege and offer to prove; and along with such Condescendence or Answer, or mutual Condescendences, the Parties shall respectively produce all Writings in their Custody or within their Power, not already produced, on which they mean to found.

*Completion of Record.*

All Writings founded on to be produced.  
*Supra*, § 3.  
13 & 14 V., c. 80, § 8.

IX. And be it further enacted, That as soon as the Condescendences or Condescendence and Answers shall be lodged, the Parties shall respectively revise their Condescendences and Answers, and make such Alterations thereon as may appear to them to be necessary, in order fully to meet the opposite Averments; and in order that the Averments of the Parties may be finally adjusted with due regard to the Matter of Law to be maintained by them respectively, each of the Parties shall, along with the Copy of his revised Condescendence or Answer, lodge with the Clerk, previous to the final Adjustment of the Record, a short and concise Note, drawn and signed by Counsel, of the Pleas in Law on which the Action or Defence is to be maintained; and in such Notes the Matter of Law so to be stated shall be set forth in distinct and separate Propositions, without Argument, but accompanied by a Reference to the Authorities relied on.

Condescendence and Answers to be revised.  
13 & 14 V., c. 86, § 2, 9, 10.  
*A. of S.* 11 July 1828, § 58.

Notes of the Grounds in Law on which the Parties rely.  
13 & 14 V., c. 86, § 1.

X. And be it further enacted, That the Parties shall appear before the Lord Ordinary, for the Purpose of finally adjusting their respective Averments in Fact, and their Notes of Pleas, when it shall be the Duty of the Lord Ordinary to hear the respective Explanations of the Parties, and to examine as before directed with the Statement of the Facts respectively, and of the Pleas, as applicable to the Summons and Cause of Action and to the Defence, and to suggest any new Plea which may to him appear necessary to exhaust the whole disputable Matter in Law or Fact in the Cause, after which the adjusted Condescendences and Answers and relative Notes of Pleas shall be subscribed by the Counsel for the Parties; and before any Order shall be pronounced, or Judgment delivered, as to the Disposal of the Cause, the Record of the Pleadings as adjusted shall be authenticated by the Lord Ordinary by his Signature; and the Record so made up and authenticated shall be held as foreclosing the Parties from the Statement of any new

Final Adjustment of Condescendences and Notes of Pleas.  
13 & 14 V., c. 86, § 5, 6.

Condescendences and Notes to be signed by the Counsel for the Parties.

Record to be made up to foreclose the Parties in point of Fact.  
*Infra*, § 11.  
*Id.* § 2.

X. and XI.—Henderson, 20 Jan. 1829, 7 S. 808.—Caledonian Iron Co. 14 Dec. 1831, 10 S. 133.—Laidlaw, 8 March 1834, 12 S. 538.—A. B. 15 Jan. 1835, 13 S. 262.—Sheriff, 24 May 1836, 14 S. 825.—Neilson, 30 June 1843, 15 Jur. 546.—Lockhart, 15 July 1845, 7 D. 1045.—Boswell, 6 Dec. 1848, 11 D. 185.—Richardson, 19 Dec. 1851, 14 D. 275.—Baird, 6 July 1858, 20 D. 1220.—Exrs. of A. B. 5 June 1858, 20 D. 1073.—Gillespie, 22 July 1859, 21 D. (Ap.) 13.

Effect of Closed Record.Abandonment of Action.

*Supra*, § 4.  
A. of S. 11 July 1828, § 115.

Exception of Res noviter veniens ad Notitiam.

A. of S. 11 July 1828, § 59.

How such new Matter to be admitted on the Record.

Note of Pleas to foreclose in point of Law;

Exception of new Pleas admitted with Leave of the Court.

*Supra*, § 10.  
*Id.* § 2.

Of Orders for compelling Parties to lodge Condescendences, etc.

*Am. by* 13 & 14 V., c. 36, § 4.

Averments in point of Fact; and no Amendment of the Libel or new Ground of Defence shall be allowed after the Record shall have been thus completed, under the Exception hereafter to be mentioned; the Pursuer having it in his Power notwithstanding to abandon the Cause on paying full Expenses or Costs to the Defender, and to bring a new Action if otherwise competent: Provided always, that it shall be competent to either Party in the Course of a Cause to state Matter of Fact noviter veniens ad Notitiam, or emerging since the Commencement of the Action, if on Cause shown Leave shall be obtained from the Lord Ordinary or the Court so to do, the said Party always paying, previous to stating such new Matter on the Record, such Expenses as may be deemed reasonable by the Lord Ordinary or the Court; and if Leave be granted, the new Matter shall within a Time to be limited be stated in the Shape of a specific Condescendence framed as above, accompanied by a Note stating the Plea in Law arising therefrom; and the adverse Party shall in such Case be ordered within a reasonable Time to put in his Answer to such Condescendence and Plea, to be adjusted and made a Part of the Record as before directed.

XI. And be it further enacted, That the Pleas stated on the Record, and authenticated as before directed, shall be held as the sole Grounds of Action or of Defence in point of Law, and to which the future Arguments of the Parties shall be confined: Provided always, that where any new Plea or Ground in Law shall, after the Completion of the Record as before, be in the Course of the Cause suggested, either by the Lord Ordinary or by the Judges in the Inner House, or by the Party, as fit to be discussed in relation to the Facts already set forth, it shall and may be competent, with Leave of the Lord Ordinary or of the Court, to add such Plea to the Note of Pleas authenticated by the Lord Ordinary as before.

XII. And be it further enacted, That the Lord Ordinary shall, in every Instance, on due Consideration of the Circumstances, fix the Time within which such Condescendences and Answers shall be lodged, and such Time shall not be prorogated, except on Payment of the Expenses previously incurred, unless before the Lapse of the Time so fixed special Application shall be made for such Prorogation, nor shall the Prorogation in any Instance be granted, except on Cause shewn, nor oftener than once; and if the Party shall fail to lodge his Condescendence or Answers, as the Case may be, within the Time originally fixed, or afterwards prorogated, the Lord Ordinary may hold the Sum-

mons or Defences for such Party as his Condescendence or Answers, finally fixing the Averments in point of Fact, on which he founds.

XIII. And be it further enacted, That after the Record of the Averments and Pleas shall have been adjusted and closed as hereinbefore directed, and when it shall appear that the Parties have respectively admitted on the Record all the Facts requisite to the Decision of the Cause, so as to render any Trial of the Facts unnecessary, the Lord Ordinary may proceed to decide the Cause with or without further Argument, or he may take the Cause to Report to the Inner House in the Form hereinafter appointed.

XIV. And be it further enacted, That where the Parties differ as to Facts which do not require to be ascertained by Jury Trial, the Lord Ordinary shall give such Orders and Directions for the Ascertainment of the Facts as to him shall appear expedient, and his Order for Disposal of the Cause shall be final, unless brought under Review of the Inner House in the Form hereinafter directed, within Twenty-one Days after such Order is pronounced; and if so brought under Review, the Interlocutor of the Inner House shall be final, without Appeal, unless on Leave expressly granted, reserving the Effect of any Objection to the Course of Proceeding in any final Appeal on the Merits of the Cause.

XV. And be it further enacted, That where the Parties differ as to Facts which require to be ascertained by Jury Trial, the Lord Ordinary shall have it in his Power either to remit the whole Cause to the Jury Court for Trial, or to send to that Court a particular Issue or Issues, in order to have such Matter of Fact ascertained, as he may deem necessary for deciding the Cause; and the Order by the Lord Ordinary, in so far as it thus remits a Cause, shall be final.

XVI. And be it further enacted by the Authority aforesaid, That where a Cause is by means of Admissions, or from the Nature of the Cause, deemed fit to be discussed and determined in the Court of Session, without having recourse to Jury Trial, or when the Parties concur in desiring to have a Question of Law or of Relevancy determined previous to Trial by Jury, or when it shall be finally ordered by the Lord Ordinary or the Inner House, that any Question of Law or Relevancy shall be determined previous to Trial, or when the Cause shall come back to the Court of Session with a Verdict on a special Issue sent for Trial, in these, or any of these or the like Cases, the Lord Ordinary may either proceed himself to decide the Cause or Matter

*Proof and Jury Trial.*

Of proceeding to the further Disposal of the Cause.

Cases to be adjudged on Admission of Parties.

*Infra*, § 16.

*Reports*; see *Infra*, § 19, 20.

§ 13 & 14 V., c. 36, § 14, 51.

Of the Ascertainment of the Fact otherwise than by Admission.

*As to Mode of Proof*, see § 13 & 14 V., c. 36, § 46-50; *A. of S.* 11 Mar. 1800.

*Appeal excluded.*

Remits for Jury Trial.

Discussion of the Cause on the Merits.

*Supra*, § 13.

*A. of S.* 11 July 1828, § 62-64.

*Review by  
Reclaiming Note.*

Power to order  
Cases to be pre-  
pared.

*Infra*, § 20.

*Rep. by* 13 & 14 V.,  
c. 36, § 14.

Lord Ordinary to  
determine Costs.  
*As to Dilatory  
Pleas, Supra*, § 5;  
*Infra*, § 21.

His Judgment  
final in the Outer  
House.

*Infra*, § 18.

*A. of S.* 11 July  
1828, § 63.

Of the Review by  
the Inner House  
of Judgments of  
the Lord Ordinary.

*A. of S.* 11 July  
1828, § 71-82; 24  
Dec. 1838 (*Suspensions, etc.*), § 5, 6;  
24 Dec. 1838 (*Reg.  
of Business*), § 12.

*Reclaiming Days*;  
*am. by* 13 & 14 V.,  
c. 36, § 11; *A. of  
S.* 11 July 1828,  
§ 79.

*Reponing.*  
*A. of S.* 11 July  
1828, § 72-8,  
110-12.

to be determined, or take it to report to the Inner House, as to him shall seem most expedient; and he may either order the Parties to argue the whole or any Part of the Cause before him, as often as he may find it necessary, or direct Cases in Writing to be prepared by the Parties in the Form hereinafter appointed, and to be seen, interchanged, and finally adjusted; and for compelling Obedience to such Order, the Court of Session are hereby required and enjoined to take effectual Means, by Regulations to be by them made, as hereinafter directed; and after such Cases shall have been so lodged, the Parties shall have an Opportunity of being further heard, if they or either of them shall desire it.

XVII. And be it further enacted, That in pronouncing Judgment on the Merits of the Cause, the Lord Ordinary shall also determine the Matter of Expenses, so far as not already settled, either giving or refusing the same in whole or in part; and every Interlocutor of the Lord Ordinary shall be final in the Outer House, subject however to the Review of the Inner House, in Manner hereinafter directed.

XVIII. And be it further enacted, That when any Interlocutor shall have been pronounced by the Lord Ordinary, either of the Parties dissatisfied therewith shall be entitled to apply for a Review of it to the Inner House of the Division to which the Lord Ordinary belongs; provided that such Party shall, within Twenty-one Days from the Date of the Interlocutor, print and put into the Boxes appointed for receiving the Papers to be perused by the Judges, a Note reciting the Lord Ordinary's Interlocutor, and praying the Court to alter the same in whole or in part; and if the Interlocutor of the Lord Ordinary shall have been pronounced on Cases, the Party applying for a Review shall, along with the Note as above directed, print and put into the Boxes the Cases which have been before the Lord Ordinary; and if the Interlocutor has been pronounced without Cases, the Party so applying shall, along with his Note as above directed, put into the Boxes printed Copies of the Record authenticated as before, and shall at the same Time give Notice of his Application for Review by Delivery of Six Copies of the Note to the known Agent of the opposite Party; and it shall in no Case be competent for either Party,

XVII. Heggie, 1 March 1826, 4 S. 510.—Gordon, 1 March 1826, 4 S. 512.—Hamilton, 3 March 1832, 10 S. 426.—Murray, 14 May 1836, 14 S. 766.

XVIII. Clyne, 5 July 1828, 6 S. 1085.—Sands, 20 Jan. 1829, 7 S. 290.—Bell, 2 July 1830, 8 S. 1007.—Ballenden, 20 Dec. 1831, 10 S. 168.—Auld, 2 Feb. 1837, 15 S. 468.—Hopetoun, 24 May 1839, 1 D. 792.—Thomson, 14 Nov. 1839, 2 D. 11.—Cleugh, 11 March 1841, 3 D. 884.—Richardson, 14 July 1843, 5 D. 1363.—Wilson, 17 Feb. 1844, 6 D. 692.—Tullis, 13 Jan. 1852, 14 D. 321.—Fraser, 30 June 1858, 20 D. 1185.—Drew, 16 Nov. 1860.

from and after the said Eleventh Day of *November*, to bring any Interlocutor of the Lord Ordinary under Review of the Inner House, by the Form of reclaiming Petition as now in use, but only in the Mode thus directed; and the Inner House shall have Power, before proceeding to decide the Cause (where Cases have not already been ordered in the Outer House), to appoint Parties to prepare and print Cases in the Form hereinafter directed, and whether Cases have been sent from the Outer House or ordered in the Inner House, the Court shall allow Counsel to be heard before giving Judgment in the Cause; and that in all Causes before pronouncing Judgment, it shall be in the Power of the Court to order an Argument by Counsel, as often as they see fit, and on the whole or on such Parts of the Cause as shall seem to the Court to require further Argument.

XIX. And be it further enacted by the Authority aforesaid, That the Lord Ordinary may, after Intimation to the Parties, report verbally to the Inner House any incidental Matter which may arise in the Course of the Cause, and such Matter so reported by the Lord Ordinary shall be disposed of upon Argument by Counsel, unless the Court shall, when the Matter comes before them, think fit to order Cases; and if Judgment shall be pronounced by the Court, or an Order shall be made in respect to the Matter so reported, that Judgment or Order shall be final, and the Court shall either settle the Expense relative to the Point so reported, or reserve Consideration thereof to the End of the Cause.

XX. And be it further enacted, That where the Lord Ordinary shall take the whole Cause to report, he shall at the same Time order the Parties to prepare and lodge Cases in the Form to be hereinafter directed, to be seen and interchanged; and the Interlocutor so taking the Cause to report, and the Order for Cases, shall be final; and when the Cause shall come to be advised by the Court on Cases prepared in consequence of such Order, or on Cases prepared by Order of the Inner House, the Court shall give to the Counsel an Opportunity of being heard before proceeding to Judgment.

XXI. And be it further enacted, That the Inner House shall, in deciding the Cause, also determine the Matter of Expenses; and the Judgment pronounced by the Inner House shall in all Causes be final in the Court of Session.

XXII. And be it further enacted, That wherever Cases shall be ordered, whether by the Lord Ordinary or by the Inner House, the Case shall commence with a Copy of the

*Reclaiming and  
Reporting.*

Proceedings of the Inner House in reviewing the Judgment of the Lord Ordinary.

*Cases.*

*Supra*, § 16.

*Id.* § 22.

*A. of S.* 11 July 1828, § 62, 63, 107.

*Rehearing.*

*Infra*, § 23.

Of reporting Causes to the Inner House; incidental Matters may be reported verbally.

*Ext. by* 18 & 14 V., c. 86, § 51.

*A. of S.* 11 July 1828, § 66, 119.

*Judgment to be Final.*

Report of the Cause itself on Cases.

*Am. by* 18 & 14 V., c. 86, § 14.

Court to hear Parties.

Judgment of the Inner House shall decide Costs, and shall be final.

48 G. 3, c. 151, 20.

*See* 18 & 14 V.,

c. 86, § 28.

*Infra*, § 40.

Form in which Cases shall be prepared.

*Supra*, § 18, 20.

XXI. Mackenzie, 10 Feb. 1829, 7 S. 383.—Aitchison, 7 March 1829, 7 S. 558.—Grant, 30 June 1835, 13 S. 1007.—Ke. r, 17 Dec. 1885, 14 S. 180. See Cases under § 17.

*Consultation.  
Appeal.*

Of Consultations  
of the Judges in  
doubtful Questions.

*Equality of Voices.*  
Am. 48 G. 3, c. 151,  
§ 8; 53 G. 3, c.  
64, § 13; 1 & 2  
G. 4, c. 88, § 8.  
Am. by 13 & 14  
V., c. 86, § 35.

*Whole Court.*  
See 13 & 14 V.,  
c. 86, § 35.

Opinion of per-  
manent Ordinaries  
taken, and Judgment pronounced  
according to the  
Opinion of the  
Majority of  
Judges.  
Am. 48 G. 3, c.  
151, § 10; 53 G.  
3, c. 64, § 15.  
See Regulations,  
App. Book V.

Limitation of  
Time as to Appeals  
to the House of  
Lords.

Record, as authenticated by the Lord Ordinary; and each Ground of Law or Plea, as stated in the Record, shall be separately argued in the Case.

XXIII. And be it further enacted, That in order to preserve Uniformity in the Decisions of the Court, and to settle doubtful Questions of Law which may arise, the Judges of either Division may, in all Causes in which the Judges of the Inner House shall be equally divided in Opinion, direct the Cause to be judged either by the Inner House Judges of both Divisions, or by the whole Court, including the Lords Ordinary; and in such Cases as it shall appear to them advisable to have any Question occurring before them settled by the Judgment of the whole Court, the Judges of either Division may order that such Matter shall be heard before the whole Judges; and Judgment shall in all Causes be pronounced according to the Opinion of the Majority of the Judges present; and the Interlocutor shall bear to be the Judgment of the Division before which the Cause depends after consulting with the other Judges.

XXIV. And whereas by an Act of the Forty-eighth Year of his late Majesty, intituled, *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords*, the Judges of either Division are empowered to require the Opinions of the other Division, upon Questions stated in Writing; be it enacted, That they may on such Occasions also be entitled to require the Opinion of the permanent Ordinaries; and the Judgment to be pronounced in the Cause shall be according to the Opinion of the Majority of all the Judges so consulted, and shall bear that it is the Judgment of the Division before which the Cause depends after consulting with the other Judges.

XXV. And be it further enacted, That from and after the Expiration of Fourteen Days after the First Day of the next Session of Parliament, the Decrees or Orders of the Court of Session, whether pronounced before or after that Time, shall be final, and not subject to be complained of by Appeal to the House of Lords, unless the Petition of Appeal shall be lodged with the Clerk of Parliament, or the Clerk Assistant, within Two Years from the Day of signing the last Interlocutor appealed from, or before the End of Fourteen Days to be accounted from and after the First Day of the Session or Meeting of Parliament for the Dispatch of public Business next ensuing the said Two Years: Provided always, that when the Person or Persons entitled to Appeal shall be out of the Kingdom of Great Britain and



*Ireland*, it shall be competent for him or them to enter an Appeal at any Time within Five Years from the Date of the last Interlocutor, if he or they shall remain Abroad so long, or within Two Years from the Time of coming into *Great Britain* or *Ireland*; the Time allowed to such Person or Persons for lodging his or their Appeal in no Case on account of mere Absence exceeding the foresaid Space of Five Years, together with the Space that may elapse before the End of the Fourteenth Day from and after the Session or Meeting of Parliament next after the Expiration of the said Five Years; and in case the Person or Persons so entitled to appeal shall be under the Age of Twenty-one Years, or non compos mentis, it shall be competent for them, or their Heirs or Representatives, where no Appeal had been previously entered on this behalf, to enter an Appeal at any Time within Two Years after full Age or coming of sound Mind, or after the Death of the Persons so disqualified and the opening of the Succession to the Heir, or before the End of Fourteen Days after the First Day of the Session or Meeting of Parliament next ensuing the said Two Years.

*Appeal to Parliament.*

XXVI. And be it further enacted, That when any Cause shall be carried by Appeal to the House of Lords, the Appellant shall lay before the House a Copy, certified as authentic by the Signature of One of the principal Clerks of Session, or of One of the Assistants of the said Clerks, for whom the principal Clerk shall be responsible, of the whole Record of the Averments and Pleas authenticated by the Lord Ordinary in manner above directed; and instead of such Cases as are delivered at present to the House of Lords, each Party shall present to the House of Lords a Case containing a printed Copy of the Record as authenticated, and of the Case presented to the Court of Session, if such there be; and they shall also be at liberty to annex a supplementary Statement, containing an Account of the further Steps which have been taken in the Cause since the Record was completed, or the former Cases prepared, and Copies of the Interlocutors or Parts of Interlocutors complained against, with a Summary of such additional Reasons as may be thought fit, set down in the Form now used in the House of Lords.

Certain Documents to be laid before the House of Lords in case of Appeal.

See 50 G. 3, c. 112, § 11.

XXVII. And whereas, according to the Forms now observed in the Court of Session, there are certain Classes of Actions in which the Forms of Process and the Mode of preparing and discussing the Cause are different from those observed in the Class of Causes called Ordinary Causes; but it is expedient that all Classes of Causes should, as nearly as may be, consistently with the Nature and Object of the Action, be prepared for Decision, and discussed according to the Method and on the Principles above laid

Proceedings in Classes of Actions in which the Forms of Process are different from ordinary Causes.

*Reductions. Rep.* 1 & 2 G. 4, c. 38, § 5.

*Procedure in  
Reductions.*

*Am. by 1 & 2 V.,  
c. 118, § 2; 13 &  
14 V., c. 86, § 7, 8.*

1 & 2 G. 4, c. 30.

Jury Court,  
55 G. 3, c. 42.

59 G. 3, c. 85.

Provisions of 59  
G. 3, c. 85, § 1, as

down; be it therefore enacted by the Authority aforesaid, That all rescissory Actions, except Reductions of the Decrees of the Court of Admiralty in Maritime Causes, shall, from and after the said Eleventh Day of November next, be enrolled and continue before the junior Lord Ordinary without being taken by Avizandum to the Inner House, and thence remitted for Discussion; and before the Lord Ordinary the said Actions shall, with such Exceptions as the Judges under the Powers hereinafter delegated to them shall think necessary, be prepared and discussed according to the Form and Method already directed with regard to ordinary Actions, but without Prejudices to the present Forms of Actions of Reduction in other Respects, and in regard to Suspensions and Reductions of Decrees pronounced by the Court of Admiralty in Maritime Causes, notwithstanding the Provisions of an Act passed in the First and Second Year of his present Majesty, intituled, *An Act for the better Regulation of the Court of Admiralty in Scotland*; and in respect to all other Actions whether originating in the Outer House or originating by Petition, or by Petition and Complaint, or otherwise, in the Inner House, the Court of Session are hereby required, under the Powers hereafter expressed, to establish by Act of Sederunt such Forms of Process suited to those several Causes as shall be most expedient and best adapted for preparing for Decision such Causes, and for duly separating the Matters of Fact from the Matter of Law involved therein, according to the Principles and Mode of Proceeding above provided with regard to ordinary Causes, and with Power to the Court to order such Causes to be prepared, discussed, and in the First Instance determined in the Outer House, or reported to the Inner House, as may seem best calculated for the due Investigation and Decision of such Causes.

XXVIII. And whereas by an Act passed in the Fifty-fifth Year of his late Majesty King George the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of Great Britain called Scotland, by the extending of Jury Trial to Civil Causes*; and by another Act passed in the Fifty-ninth Year of his late Majesty's Reign, to amend the Act above mentioned; and by Regulations framed and approved of in the Manner by the foresaid Acts provided, several Provisions have been made relating to the Jury Court, and to Trial by Jury in Civil Causes, some of which it is expedient to repeal, vary, and amend, and to make other Provisions for the further Improvement of that Mode of Trial; be it therefore further enacted, That the Provisions of the said Act of the Fifty-ninth of George the Third, by

which it is directed that certain Actions be remitted to the Jury Court, but that, previous to their being so remitted to the Jury Court, Questions of Law or Relevancy may be raised, pleaded, and decided in the Court of Session, shall be and the same are hereby repealed; and the following Actions, whether originating in the Court of Session or in the Court of Admiralty, shall be held as Causes appropriate to the Jury Court, and shall, for the Purpose of being discussed and determined in that Court, be remitted at once to that Court in manner hereinafter to be directed; namely, all Actions on account of Injury to the Person, whether real or verbal, as Assault and Battery, Libel or Defamation; all Actions on account of any Injury to Moveables or to Land, when in this last Case the Title is not in question; all Actions for Damages on account of Breach of Promise of Marriage, or on account of Seduction or Adultery; all Actions founded on Delinquency or quasi Delinquency of any Kind, where the Conclusion shall be for Damages only and Expenses; all Actions on the Responsibility of Shipmasters and Owners, Carriers by Land or Water, Innkeepers or Stablers, for the safe Custody and Care of Goods and Commodities, Horses, Money, Clothes, Jewels, and other Articles, and in general all Actions grounded on the Principle of the Edict Nautæ Caupones Stabularii; all Actions brought for Nuisance; all Actions of Reduction on the Head of Furiosity and Idiotcy, or on Facility and Lesion, or on Force and Fear; all Actions on Policies of Insurance, whether for Maritime or Fire or Life Insurance; all Actions on Charter Parties and Bills of Lading; all Actions for Freight; all Actions on Contracts for the Carriage of Goods by Land or Water; and Actions for the Wages of Masters and Mariners of Ships or Vessels.

XXIX. And be it further enacted, That all the Actions above enumerated, originating in the Court of Session, shall be first enrolled in the Roll called the Regulation Roll, whether Appearance shall have been entered for the Defender or not; and if no Appearance shall be made when the Cause is called, Decree shall be pronounced in Absence, according to the present Practice; but if Appearance shall be made for the Defender, or as soon as the Defender shall be reponed against a Decree in Absence, the Lord Ordinary shall forthwith remit the Cause to the Jury Court; and in any of the Causes or Actions above enumerated, which shall originate in the Court of Admiralty, Judgment shall at the First Calling before the Judge Admiral be pronounced, if no Appearance shall be made for the Defender; but as soon as the Defender shall enter Appearance, and be reponed against the Decree pronounced in Absence, the

*Procedure in Appropriated Causes.*

to remitting certain Actions to the Jury Court, etc., repealed.

Description and Enumeration of Causes appropriate to the Jury Court. Am. by 13 & 14 V., c. 86, § 49.

Such Causes arising in the Court of Session, if Appearance be made, to be remitted to the Jury Court.

Such Causes in the Court of Admiralty, if Appearance be made, to be remitted to the Jury Court.

Jury Court Procedure.

Judge Admiral shall forthwith remit the Cause to the Jury Court, provided the Demand shall amount to Forty Pounds and upwards, and provided, that if the Cause be maritime, Caution shall have been found according to the Practice of that Court; and such Causes when remitted to the Jury Court, from whatever Court, shall be prepared, and the Record of Averments and of Pleas completed and authenticated by the Jury Court, or any One of the Judges of that Court, in the same Manner as is hereby directed to be done in the Court of Session.

Two Judges of the Court of Session to be additional Commissioners of the Jury Court.  
Directions as to the Preparation of Causes sent to the Jury Court.

XXX. And in Contemplation of the Increase of Causes thus to be remitted to the Jury Court, be it further enacted, That, of the Judges of the Court of Session, Two shall be appointed as additional Commissioners of the Jury Court; and that in the Preparation of the enumerated Causes which shall be sent at once to the Jury Court as above, the Jury Court, or One of the Judges thereof, shall proceed in the Way and Manner hereinbefore directed, in regard to the Preparation of Causes in the Court of Session.

His Majesty may appoint such additional Judges.

XXXI. And be it further enacted, That it shall and may be lawful for his Majesty to appoint such Two of the said Judges of the Court of Session to be additional Judges of the Jury Court, in the Manner in which Judges of the Jury Court are directed to be appointed by an Act passed in the Fifty-fifth Year of the Reign of his late Majesty George the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending the Trial by Jury to Civil Causes*; and to each of such Judges there shall be paid the Sum of Six hundred Pounds per annum, payable in the same Manner and at the same Time with the Salaries of the other Judges of the said Jury Court; for which Purpose it shall and may be lawful for his Majesty, his Heirs and Successors, to order and direct to be issued by quarterly Payments, out of the Monies that shall arise from any of the Duties and Revenues in that Part of *Great Britain* called *Scotland*, which by the several Acts made in the Seventh and Tenth Years of the Reign of Queen *Anne*, were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed by her Majesty, for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*, the Sum of One thousand two hundred Pounds, in addition to the Sum of Seven thousand Pounds directed by the said recited Act to be issued in the Manner therein directed.

Compensation provided to Persons who may suffer pecuniary

XXXII. And be it further enacted, That if any Assistant Clerk and Closet Keeper, or any other Clerk or Officer of Court in the said Court of Session, or any Clerk or other Officer in the said Court of Teinds, or in the said Court of

Admiralty, Courts in *Scotland*, shall make Application to the Barons of Exchequer in *Scotland*, setting forth the Circumstances of his Case, and shall make it appear that he has suffered, or will suffer pecuniary Loss from the Operation or Effect of any of the Regulations of this Act, it shall and may be lawful for the said Barons to award to any such Person such Compensation as the said Barons shall find such Person entitled to, either by the Payment of a gross Sum, or by way of Annuity, as they shall think proper, to be paid out of the same Fund, and in the Manner in which Compensations are directed to be paid, and are made payable, under an Act passed in the First and Second Years of the Reign of his present Majesty, intituled, *An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session, and in the Court of Commission for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts.*

XXXIII. And be it further enacted, That if after the Record shall have been completed in manner already directed as to Causes in the Court of Session, the Parties shall, by mutual Admissions, render any Trial of the Facts unnecessary, and leave, in the Opinion of the Jury Court or Judge thereof, a Question merely of Law to be determined, the said Jury Court, or the Judge thereof, after having those Admissions put upon Record, and subscribed by the Counsel for the Parties, as already directed for Causes in the Court of Session, shall forthwith remit the Cause to the Ordinary in the Court of Session by whom the same was remitted, or to the Judge of the High Court of Admiralty, if the Cause originated in that Court, to be proceeded in and determined by those Courts respectively; and if after the Record shall have been completed as above, the Parties shall not be agreed upon the Facts, so as to bring the Cause to a Question merely of Law, but shall concur in a Minute or Note to the Jury Court or Judge, requiring that any Question of Law or Relevancy arising out of the Pleadings to be specified in such Minute or Note shall be determined before going to Trial, the said Court or Judge, if the Request shall appear just or reasonable, shall remit such Question to the Ordinary by whom the Cause was remitted, or to the Court of Admiralty, if the Cause shall have originated in that Court; and the Cause shall afterwards proceed in those Courts respectively, for the Decision of such Question of Law or Relevancy; but if either of the Parties shall, without the Concurrence of the other, insist that there is a Point of Law or Relevancy, which ought previously to Trial to be determined, it shall be competent for such Party to move for an Order to have the

*Jury Court Procedure.*

Loss by the Operation of this Act.

1 & 2 G. 4, c. 38.

Questions arising on Admissions to be remitted to the Court of Session, etc.

Questions which the Parties desire to be previously fixed to be remitted.

Question, whether Point of Law to be decided previous to Trial, to be settled by the Jury Court.

*Jury Court Procedure.*

The Interlocutor of the Judge subject to Review.

The Decision of the Jury Court to be final on the Question :

If the Question of Law is to be previously decided, the Cause to be remitted to the Court of Session.

If a Question of Fact remain, the Cause to be sent back to the Jury Court.

Cause remitted to the Court of Session, or Court of Admiralty, if the Cause have come from that Court, and on such Motion it shall by the said Jury Court, or Judge thereof, be determined whether the Question raised ought to be decided previous to Trial, or left for Discussion at the Trial, or for Decision after Verdict ; and if such Question shall arise before One of the Judges of the Jury Court, he shall have it in his Power either to determine the Question, or to report it for Decision by the whole Judges of the Jury Court, or a Quorum thereof, consisting in all Cases of not less than Three of such Judges ; and the Decision of the said Judge of the Jury Court in the said Matter shall be final and conclusive, if not brought under Review of the whole Jury Court, by Motion to that Effect, made in the said Court, and of which due Notice shall be given according to the Form of giving Notices in that Court, within Ten Days after the Interlocutor of the said Judge shall be pronounced ; and the Decision of the Jury Court, either pronounced on the Review of the said Judge's Interlocutor, or on the Cause being by him taken to report, shall be final on that Question ; and if it shall be ordered by the said Judge or Jury Court, that such Question ought to be determined previous to Trial, the Cause shall forthwith be remitted to the Ordinary of the Court of Session, by whom the same was remitted to the Jury Court, or to the Judge of the High Court of Admiralty respectively, to have that Question determined ; and when, in either of the Cases now specified, the Cause shall be remitted to the Court of Session, or to the Judge of the High Court of Admiralty, for their Decision on a previous Question of Law, the said Court of Session, or the Judge of the Court of Admiralty, shall proceed to determine the same according to the Rules and Regulations of those respective Courts ; the Determination of the Court of Session being final in that Court, and that of the Court of Admiralty subject, as it now is by Law, to the Review of the Court of Session ; and the Determination of such previous Question of Law or Relevancy shall not be open to Appeal to the House of Lords without Leave expressly granted, reserving the full Effect of the Objection to the Decision in any Appeal to be finally taken ; and after the Determination of such Question, the Cause may be remitted back to the Jury Court, to be there finally disposed of ; and if there shall remain Matter of Fact to be ascertained between the Parties, the said Matter shall be tried by Jury, and the Parties shall forthwith proceed before the said Jury Court, or One of the Judges thereof, to prepare the Issue or Issues for Trial, in manner hereinafter directed.

XXXIV. And be it further enacted, That from and after the said Eleventh Day of *November* next, when a Cause shall be ready for the framing of Issues, whether it be One of the Causes above enumerated as appropriate to the Jury Court, or a Cause remitted generally from the Court of Session for Trial by Jury, the Pursuer of the Issue shall deliver to the Clerk of the Jury Court the Issue or Issues in the Cause which he may conceive to be proper for Trial, prepared and signed by Counsel; and in like Manner the Defender in the Issue may, if he think proper, lodge with the Clerk the Issue or Issues in the Cause which he may conceive to be proper for Trial, prepared and signed in like Manner; and if the Issue or Issues so respectively delivered to the Clerk shall be approved of by the Jury Court, the same Issues shall be delivered out to the Parties by the Clerk to be tried by the Jury; but if the Issues shall not be delivered by the Parties, or either of them, to the said Clerk, or if, when so delivered, they shall not be approved of by the Court, the said Court shall direct a proper Issue or Issues to be framed, or shall alter the Issue or Issues as framed and delivered, either by adding such other Issues as they may deem necessary, or by leaving out such as are unnecessary, or by remodelling those which have by the Parties been delivered; and a Copy of the Issue or Issues so altered by the Court shall be delivered out for Trial to the respective Parties in the Cause; provided, however, that if either Party shall object to the Issues, as settled by the Court, he shall be at liberty, at any Time within Ten Days, to apply to the Court, by Motion, to have such Alteration made therein as he may think will better adapt the Issue for the Trial of the Cause, or to have the Issues originally proposed by him adopted; and the Court shall, after hearing Counsel, make such Order thereupon as the Justice of the Case may require, and which Order shall be final.

XXXV. And whereas by One of the Regulations for the Government of the Jury Court, framed and approved of in the Manner directed by the aforesaid Act of the Fifty-ninth of his late Majesty, it is ordered, that, preparatory to Trial by Jury, the Parties shall reciprocally exchange Lists of the Witnesses to be examined; but the Practice thereby enjoined has been found inexpedient; be it therefore enacted, That the above Regulation shall be, and the same is hereby repealed; and from and after the Date of this Act, it shall not be necessary for the Parties to produce and exchange, as preparatory to the Trial, the Lists of the Wit-

*Adjustment of  
Issues.*

How Issues are to  
be framed and  
settled.

*Am. by 13 & 14 V.,  
c. 36, § 88.*

List of Witnesses  
not to be furnished  
previous to Trial.  
59 G. 3, c. 35.

*As to Documentary  
Evidence, etc.,  
see A. of S. 16  
Feb. 1841, § 18-21;  
16 July 1859.*

XXXIV. Neilson, 2 June 1842, 4 D. 1828. As to Adjustment of Issues under the existing practice, see Note to 13 & 14 V., c. 36, § 88.

New Trial.

Time of Sitting  
of the Jury Court.  
*Rep.* 59 G. 3, c. 35,  
§ 21, 22.

Motions for new  
Trials.  
*Am.* 55 G. 3, c. 42,  
§ 6; 59 G. 3, c. 35,  
§ 16.  
*A. of S.* 16 Feb.  
1841, § 86, 89.

Motions for new  
Trial in Admiralty  
Causes.

Forms of Proceed-  
ing in Admiralty  
and in the Com-

nesses proposed to be examined by them, but the Parties shall be at liberty at the Trial to adduce and examine such Witnesses as they may think fit, without having given any previous Notice of their Intention to call them.

XXXVI. And be it further enacted, That so much of the foresaid Act of the Fifty-ninth of his late Majesty, as regulates the Terms and the Times of the Sittings of the said Jury Court, shall be and the same is hereby repealed; and from and after the said Eleventh Day of *November* next, the said Jury Court shall meet for the Dispatch of the Business of the Court, whether requiring the Intervention of a Jury or not, during the whole Period of the Session of the Court of Session, and that they may hold Sittings for the Trial of Issues for a Fortnight thereafter, and also for Ten Days during the Christmas Recess; and during the foresaid Space, the said Court, or the individual Judges thereof, shall sit on such Days, and with such Continuation of Days, as shall by Act of Sederunt, to be made in manner herein afterwards provided, be appointed:

XXXVII. And in order to prevent Doubts which have been raised on the Provisions of the foresaid Act of the Fifty-ninth of his late Majesty, relating to Motions for new Trials, be it enacted, That in all Cases where Issues have been prepared and are sent from the Court of Session for the Ascertainment of Matter of Fact, and the Verdict is made returnable to that Court, all Motions for new Trial shall be made in the Inner House of that Division of the Court from which the Issue or Issues has or have been sent; and Motions for new Trials shall in all other Cases be made in the Jury Court.

XXXVIII. And whereas by the foresaid Act of the Fifty-ninth of his late Majesty it is provided, That in all Causes remitted by the Court of Admiralty to the Jury Court, the Bills of Exceptions shall be presented by the Judge of the Jury Court to the Divisions of the Court of Session alternately; but no Provision is made with respect to Motions for new Trials on Verdicts in Cases coming from the Court of Admiralty; be it enacted, That Motions for new Trials shall be made in the Divisions of the Court of Session alternately in Cases of the above Description, where the Verdict is on an Issue prepared and sent from the Court of Admiralty for ascertaining Facts, and returnable into that Court, in a Maritime Cause; and Motions for new Trials in all other Cases shall be made in the Jury Court.

XXXIX. And whereas it will essentially contribute to the Attainment of the Objects proposed in this Act, that in the High Court of Admiralty, the Court of the Commis-



saries of Edinburgh, and Inferior Courts, Forms of Proceeding in the Preparation of Causes which have been before directed relative to Causes in the Court of Session shall be followed as closely as may be done consistently with the peculiar Nature of those several Jurisdictions, and with the State of those Courts in respect to the Skill and legal Knowledge of the Procurators who attend and practise therein; therefore, and in order to establish Uniformity in the Modes of Proceeding in the said Courts, and follow out the Spirit of the Present Act, in so far as that may be done consistently with local Circumstances, be it further enacted by the Authority aforesaid, That the Judges of the Court of Session and Jury Court, as herein afterwards empowered, shall and they are hereby required to make due Inquiry, and thereupon to fix, by Act of Sederunt, such Regulations, to be observed in the Practice of the above Courts, as may best be calculated to give effect to this Act, and to forward the Object herein proposed.

XL. And be it further enacted, That when in Causes commenced in any of the Courts of the Sheriffs, or of the Magistrates of Burghs, or other inferior Courts, Matter of Fact shall be disputed, and a Proof shall be allowed and taken according to the present Practice, the Court of Session shall, in reviewing the Judgment proceeding on such Proof, distinctly specify in their Interlocutor the several Facts material to the Case which they find to be established by the Proof, and express how far their Judgment proceeds on the Matter of Fact so found, or on Matter of Law, and the several Points of Law which they mean to decide; and the Judgment on the Cause thus pronounced shall be subject to Appeal to the House of Lords, in so far only as the same depends on or is affected by Matter of Law, but shall, in so far as relates to the Facts, be held to have the Force and Effect of a special Verdict of a Jury, finally and conclusively fixing the several Facts specified in the Interlocutor: Provided, however, that, except in Consistorial Causes, the Court of Session shall, in reviewing the Sentences of inferior Judges, have Power to send to the Jury Court such Issue or Issues to be tried by Jury, as to them shall seem necessary for ascertaining Facts which may not have been proved to their Satisfaction by the Evidence already taken, or which may have been omitted in the Cause, the Verdict to be returned to the Court of Session, to assist that Court in the Determination of the Cause; and

*Advocation on Proof. Finality.*

missary and inferior Courts.

Interlocutor of Court of Session on Proof taken in inferior Courts, to be final as to Findings of Fact.

See 18 & 14 V., c. 86, § 82; 16 & 17 V., c. 80, § 25.

*Power to order Issues.*

As to Consistorial Cases, see 1 W. 4, c. 69, § 87.

XL. Jack, 1 April 1835, 1 S. & M'L. 77. See Cases under 16 & 17 V., c. 80.—Learmonth, 17 Jan. 1829, 7 S. 276.—Corey, 12 July 1842, 4 D. 1514.—Thomson, 14 Dec. 1845, 8 D. 303.—Brownlee, 27 June 1846, 8 D. 926.—Wishart, 8 July, 1850, 12 D. 1177.—Kilgour, 5 Feb. 1852, 14 D. 441.—Harrington, 20 Jan. 1854, 16 D. 368.

Advocation for  
Jury Trial

*Am.* 59 G. 3, c. 35,  
§ 14. ~

Power to advocate  
against Orders for  
Proof in inferior  
Courts.

*Not rep.* by 16 &  
17 V., c. 80, § 24.  
*A. of S.* 11 July  
1828, § 5-7; 24  
Dec. 1838, § 10.

Bills of Advocacy-  
tion.

*Am.* by 1 & 2 V., c.  
86, § 1, 6.  
*A. of S.* 11 July  
1828, § 2, 8.

*As to Caution; see*  
*Infra*, § 48, 49.  
*Am.* by 13 & 14  
V., c. 86, § 34.

the said Court shall also have Power to remit the whole Cause for Trial to the Jury Court; and in neither of these Cases shall it be necessary to have the Consent of the Parties to the cancelling of the Depositions already taken in the Cause before proceeding to Jury Trial, but the Court of Session shall have Power to give such Directions with regard to the Proof already taken, or with regard to any Part or Parts thereof, as to them shall seem just; to which Effect the Provision in the foresaid Act of the Fifty-ninth Year of his late Majesty, in so far as the Consent of the Parties to the cancelling of the Depositions already taken is thereby required, shall be and the same is hereby repealed; and further, the Court of Session shall have Power to remit the Cause with Instructions to the inferior Court, if that Course shall appear to them the most just and expedient in the Circumstances of the Case; but it is hereby expressly provided and declared, that in all Cases originating in the inferior Courts in which the Claim is in Amount above Forty Pounds, as soon as an Order or Interlocutor allowing a Proof has been pronounced in the inferior Courts (unless it be an Interlocutor allowing a Proof to lie in retentis, or granting Diligence for the Recovery and Production of Papers), it shall be competent to either of the Parties, or who may conceive that the Cause ought to be tried by Jury, to remove the Process into the Court of Session, by Bill of Advocation, which shall be passed at once without Discussion and without Caution; and in case no such Bill of Advocation shall be presented, and the Parties shall proceed to Proof under the Interlocutor of the inferior Court, they shall be held to have waived their Right of Appeal to the House of Lords, against any Judgment which may thereafter be pronounced by the Court of Session, in so far as by such Judgment the several Facts established by the Proof shall be found or declared.

XLI. And be it further enacted by the Authority aforesaid, That from and after the said Eleventh Day of November next, Bills of Advocation, complaining of final Judgments of Sheriffs and other inferior Judges, shall contain a Copy of the Summons or Petition by which the Action may have commenced in the inferior Court, and of the Defences or Answers, with the Interlocutors pronounced, or such of them as the Party shall complain of, and without any other Narration, and without Argument; and such Bills of Advocation shall at once be passed by the Lord Ordinary on the Bills, on Caution being found to make Payment of the Expenses incurred in the inferior Court, and also such Expenses as may be incurred in the Court of Session, or on

juratory Caution for such Expenses, in Cases where such Caution is by the present Practice held sufficient.

XLII. And be it further enacted by the Authority aforesaid, That in all Advocations of Interlocutors pronounced by Sheriffs, it shall be competent to the inferior Judge to regulate in the meantime, on the Application of either Party, all Matters regarding interim Possession, having due regard to the Manner in which the mutual Interests of the Parties may be affected in the final Decision of the Cause; and such interim Order shall not be subject to Review, except by the Lord Ordinary, or the Court, in the Course of discussing the Process of Advocation; reserving to the Court of Session or Lord Ordinary full Powers during the Course of Discussion of the Cause in the said Court, to give such Orders and Directions in respect to interim Possession as Justice may require.

XLIII. And be it further enacted by the Authority aforesaid, That in all Actions before any inferior Court, where a Party shall intimate in Writing to the Clerk of Court that he intends to advocate the Cause, and shall therewith lodge a Bond of Caution for such Expenses as may be incurred in the Court of Session, as provided in this Act, the Space of Fifteen Days in the ordinary Case, and Thirty Days in Causes before the Courts of Orkney and Shetland, shall be allowed after final Judgment to apply by Bill of Advocation to the Court of Session, before Extract shall be competent; but on the Elapse of the foresaid Terms respectively, if no Bill of Advocation shall have been intimated to the Clerk of Court, he may give out the Extract on the Application of either Party, it being competent however to present a Bill of Advocation at any Time before the Decree has been actually extracted; and when Decree has passed in Absence in any inferior Court, or in the Court of Admiralty, and has been extracted, it shall be competent to apply to the Court in which such Decree was pronounced, to have the Decree recalled; and on Consignation in the Hands of the Clerk of the Court of the Expense incurred, the said Court shall have Power to stop Execution and reponne the Defender, and revive the Action, as if Decree had not been extracted.

XLIV. And be it further enacted by the Authority as aforesaid, That when any Judgment shall be pronounced by an inferior Court, ordaining a Tenant to remove from the Possession of Lands or Houses, the Tenant shall not be entitled to apply as above, by Bill of Advocation to be passed at once, but only by means of Suspension, as herein after regulated.

*Advocation.  
Removings.*

Power to regulate interim Possession.

*Ex. to Suspensions,*  
1 & 2 V., c. 86, § 4.  
*As to Appeals, see*  
48 G. 3, c. 151, § 17.

Time at which Decrees of inferior Courts may be extracted.

*Am. by 1 & 2 V., c. 86, § 1, 3, 6.*  
*A. of S. 11 July 1828, § 2.*

Decrees in Absence in inferior Courts, and in Admiralty.

Decrees in Actions of Removing to be subject only to Suspension.

*Rep. 1 & 2 G. 4. c. 88, § 2. See St. 1555, c. 89.*

XLII. Haldane, 21 Jan. 1826, 4 S. 830.

XLIV. Graham, 16 June 1843, 5 D. 1207.

*Advocation and Suspension.*

Bills of Advocation of interlocutory Judgments.

50 G. 3, c. 112, § 86; 1 & 2 V., c. 86, § 3.

*A. of S.* 11 July 1828, § 4.

Lord Ordinary may pass Bills of Suspension:

*Am.* 50 G. 3, c.

112, § 42, 43.

*Am.* by 1 & 2 V., c.

86, § 4, 5.

*Infra*, § 47.

Proceedings as to Interlocutors complained of.

*A. of S.*, 11 July 1828, § 8, 21.

Cautioners in Bills of Suspension.

XLV. And whereas, under the foresaid Act passed in the Fiftieth Year of his late Majesty, Bills of Advocation are admitted against interlocutory Judgments in certain Cases; be it further enacted, That when such Bills of Advocation shall be passed, it shall not be necessary for the Complainer to find Caution, except for Expenses, as in other Cases of Advocation above mentioned; and all Interlocutors by the Lord Ordinary on the Bills, passing or refusing such Bills of Advocation, shall be final.

XLVI. And be it enacted, That in all Cases, without Distinction, the Lord Ordinary on the Bills may pass Bills of Suspension, without requiring the Concurrence of the Inner House during Session, or of One or more Ordinaries during Vacation; and in complaining of any Interlocutor pronounced by the Lord Ordinary on the Bills, the Party shall proceed, not as at present by Reclaiming Petition, but by presenting a printed Note to the Inner House, stating the nature of the Bill, reciting the Interlocutor, and praying for an Alteration thereof; and upon such Note being presented, the Inner House shall order the Counsel for the Parties to be heard, and on hearing them shall either grant or refuse the Application, or appoint Parties to give in mutual Cases on the Question; and thereafter the Court shall either refuse the Application, or remit to the Lord Ordinary to pass or to refuse the Bill, or to remit to the inferior Judge with Instructions; and any Interlocutor of the Court refusing such Application, or of the Lord Ordinary on a Remit from the Court, shall be final; and when a Bill of Suspension shall have been passed on a Remit from the Inner House, or in consequence of the Lord Ordinary having taken the Cause to report to the Inner House, the Letters of Suspension shall be discussed before a Lord Ordinary of that Division, unless remitted ob contingentiam to some previous Process depending before the other Division; and in the Event of Bills of Suspension being passed of Decrees of inferior Courts, it shall be competent for the Lord Ordinary or the Court to find the Suspender entitled to his Expenses in the inferior Court, as well as in the Court of Session.

XLVII. And be it also enacted, That Cautioners in a Bill of Suspension shall be liable to fulfil the Obligation in their Bond, although the Letters of Suspension shall not be expedite before the Day of Citation appointed in the Deliver-

XLV. Henderson, 8 March 1849, 11 D. 1014.—Dalmellington Iron Co. 20 March 1856, 18 D. 851.

XLVI. Arnott, 25 Nov. 1825, 4 S. 227.—Marshall, 2 Feb. 1828, 6 S. 477.—Robertson, 17 May 1828, 6 S. 824.—Crichton, 1 March 1831, 9 S. 516.—Fyfe, 28 Feb. 1832, 10 S. 881.—Morrison, 1 Feb. 1842, 4 D. 563.

XLVII.—Stewart, 1 Dec. 1848, 6 D. 151.

ance, and also in the Case of the Chargers obtaining and duly extracting Protestation for not enrolling, calling, and insisting.

*Advocation and Suspension.*

XLVIII. And be it further enacted, That the Lord Ordinary in the Outer House, before whom any Suspension or Advocation shall come to be discussed, shall proceed in preparing the Cause for Judgment after the Manner already directed as to Causes in the Outer House; and the Party resisting the Suspension shall be required, by way of Defence in the Outer House, to return Answers to the Reasons of Suspension.

As to Cases of Suspension or Advocation before the Lord Ordinary.  
*Am by 1 & 2 V., c. 86, § 1-6; 18 & 14 V., c. 86, § 9.*

XLIX. And be it enacted, That in regard to Actions depending in the Court of Session, in which any Interlocutor shall have been pronounced before the Eleventh Day of *November* next, the Regulations hereinbefore provided may be enforced, in so far as not inconsistent with the Rules of Court and Forms of Procedure now in force: Provided always, that in every such Action, where the Record shall be made up and completed in Terms of this Act, the Provisions of this Act, in so far as they apply to Steps of Process subsequent to the making up of the Record, shall be enforced in all respects.

In Actions depending, where Interlocutor is pronounced before 11th November next, how far the Regulations herein provided to be enforced, etc.

L. And in order to carry into further Execution the Provisions of this Act, and the more effectually to accomplish the Object of it; be it further enacted by the Authority aforesaid, That from and after the passing of this Act, the Court of Session, together with the chief Commissioner of the Jury Court, assembled by the Lord President of the Court of Session, shall be and they are hereby empowered and required accordingly to make such Orders and Regulations concerning the Forms of Process, and such Arrangements in respect of Attendance and Hours of doing Business, and generally for regulating the Proceedings both of the Court of Session and of the Jury Court, as may most effectually carry into Execution the Purposes of this Act, and remove any Difficulties which may in the Details of Practice be found to arise in expediting the Business before the said Courts, and of the Court of the Lords Commissioners for Plantation of Kirks and Valuation of Teinds, provided the same be not inconsistent with the Provisions of this Act; and the said Judges assembled as above shall also have Power to make such Regulations and Arrangements in respect of the Time and Rotation of the Business in the said Courts, and before Lords Ordinary, as may most effectually secure the due Performance of the respective Duties of the said Courts, and of the Judges thereof; and the said Judges, assembled as before, shall have Power and are hereby required to make such Regulations and Orders rela-

Powers to the Judges of the Court of Session and Jury Court to make Regulations.  
*See A. of S. 11 July 1828.*

Edictal Citation.

Regulation of  
Forms of Citation,  
Charge, etc.

*Am. by 13 & 14  
V., c. 36, § 22.  
A. of S. 11 July  
1828, § 22.*

*As to Arrestment,  
1 & 2 V., c. 114, §  
18.*

*As to Service on  
Companies, etc., see  
8 V., c. 17, § 187;  
8 V., c. 19, § 128;  
19 & 20 V., c. 47,  
§ 58-55.*

The Record of  
Citations to be  
printed.  
*Supra*, § 51.

tive to the Forms of Proceeding in the High Court of Admiralty, Court of the Commissaries of *Edinburgh*, and inferior Courts, as may be best calculated to carry into Execution the Purposes of this Act; and it is hereby provided, that the said Judges assembled as above may meet for the above Purposes during Vacation, as well as during Session, and that they may alter and amend such Regulations from Time to Time.

LI. And be it further enacted by the Authority aforesaid, That from and after the Eleventh Day of *November* next, the subsisting Forms of Edictal Citation, Charge, Publication, Citation, and Service at the Market Cross of *Edinburgh*, Pier and Shore of *Leith*, as against Persons forth of *Scotland*, shall cease and be discontinued; and in lieu thereof such Edictal Citations, Charges, Publications, Citations, and Services at the Market Cross of *Edinburgh*, Pier and Shore of *Leith*, as against Persons forth of *Scotland*, shall be done and performed by Delivery of a Copy thereof at the Record Office of the Keeper of the Records of the Court of Session, in the Manner now practised in Cases of Citation or Charge at the Dwelling House of a Party not personally apprehended; and the Keeper of the Records or his Clerk shall forthwith register, in a Book to be kept for that Purpose, an Abstract of the Copy so delivered, exhibiting the Time of Service, the Nature of the Writ, the Names and Designations of the Parties, and the Day against which the Party shall be called upon to give Obedience, or to make Appearance; and the Keeper of the said Records shall keep Three distinct and separate Registers, One for all Citations on Summonses and Orders of Service, as against Persons forth of *Scotland*, to appear before the several Supreme Civil Courts respectively; another Record for all Citations by virtue of Letters of Supplement to Persons forth of *Scotland* to appear before any of the inferior Courts of *Scotland*; and a third for all Charges, Intimations, and Publications to Persons forth of *Scotland*, given by virtue of Letters other than Summonses passing the Signet.

LII. And it is further provided and enacted, That the said Abstracts, in so far as they comprehend Citations by virtue of Summonses, Precepts, Warrants of Court, and Letters of Supplement, shall periodically be printed by the Keeper of the said Records; and this Publication by means of Printing shall commence at the Distance of Fourteen Days from the said Eleventh Day of *November* next, and shall regularly be continued at the End of each successive Four-

teen Days; and at all Times the said Register of Charges, Citations, and Publications shall be open to Inspection, and the Copies of Charge, Citation, and Service, which shall be lodged as above with the Keeper of the Record or his Clerk, shall be preserved during Three Years; and it shall be competent to the Court of Session to fix such Allowance for the Trouble and Expense of the Duty thus imposed on the Keeper of the Records, to be paid to him from the Fee Fund, as to the said Court shall seem reasonable.

LIII. And be it further enacted, That from and after the said Eleventh Day of *November* next to come, the Practice of citing Defenders to appear on Two Diets of Court shall in all Cases cease, and all Summonses shall thenceforward proceed on One Diet only; viz., privileged Summonses against Defenders within *Scotland* on One Diet of Six Days, other Summonses against Defenders residing in *Orkney* and *Shetland*, a Diet of Forty Days, and for all other Persons within *Scotland*, a Diet of Twenty-seven Days, and for Defenders out of *Scotland*, a Diet of Sixty Days; and it is hereby provided and declared, that where a Person not having a Dwelling House in *Scotland* occupied by his Family or Servants shall have left his usual Place of Residence, and have been therefrom absent during the Space of Forty Days without having left Notice where he is to be found within *Scotland*, he shall be held to be absent from *Scotland*, and be charged or cited according to the Forms herein prescribed accordingly.

LIV. And whereas certain Inconveniencies have been experienced in Proceedings of a judicial Nature carried on before the Lords Commissioners for Plantation of Kirks and Valuation of Teinds; be it enacted, That from and after the Eleventh Day of *November* next, all Actions for the Valuation or Sale of Teinds or Actions of proving the Tenor of the same, all Actions of Suspension or Reduction of Localities, and all Actions of Declarator or Reduction connected with Teinds, which can at present be competently brought before the said Lords Commissioners for the Plantation of Kirks, shall be brought before and be decided by one or other of the Divisions of the Court of Session, who shall be held as a Quorum of the said Commissioners; and all such Causes shall be proceeded in, as nearly as possible, according to the Forms prescribed by this Act for the Preparation of Causes in the Court of Session; and the Lord Ordinary shall have the same Power to determine the Cause, or to report the same to the Inner House, as is declared to be competent by this Act to the Lord Ordinary in the Outer House, in Causes before the Court of Session;

*Citation. Teind Court.*

Defenders to be cited on One Diet only.

*Am.* 50 G. 3, c.

112, § 27.

*Am.* by 13 & 14 V.

c. 36, § 21.

*Absent Defender.*

*St.* 1540, c. 75.

*See A. of S.* 14

Dec. 1805.

*Of the Court of Teinds.*

*A. of S.* 12 Nov. 1825.

*See Infra*, Book III.

*Teind Court, etc.*

and in like Manner, he shall not be entitled to review his own Interlocutors, but the same shall be subject to Review only in the Inner House, in the Manner directed in Causes before the Court of Session: Provided always, that the Jurisdiction of the Lords Commissioners for Plantation of Kirks and Valuation of Teinds, in assigning or modifying competent Stipends to the parochial Clergy out of the Teinds of the Parish, and in uniting and disjoining Parishes, and generally whatever Jurisdiction the said Court of Teinds may possess of a ministerial and discretionary Nature, shall nowise be altered or affected by this Act, but the same shall continue to be exercised by the whole Lords Commissioners for Plantation of Kirks and Valuation of Teinds, or Quorum thereof, in the same Way and Manner as heretofore; but all Actions in relation to localling of modified or augmented Stipends among Heritors, and other Causes which may be remitted by the said Lords Commissioners to a Lord Ordinary, shall thereafter be conducted as nearly as may be according to the Forms prescribed for Causes before the Court of Session, and the Interlocutors of such Lord Ordinary shall be subject to Review only by the Division of the Court of Session to which such Lord Ordinary belongs, which Division shall to that Effect be held as a Quorum of the said Commissioners; and in all the aforesaid Actions, and in all other Matters connected with Teinds, the Teind Clerk shall continue as heretofore to officiate as Clerk.

Continuance of Act, as far as relates to Jury Court.

LV. And be it enacted, That the Provisions of this Act, in so far as the same relate to the Constitution of the Jury Court, shall continue and be in force from the Eleventh Day of November next, until the Thirtieth Day of June in the Year One thousand eight hundred and thirty, and from thence to the End of the then next Session of Parliament.

Persons appointed by his Majesty to inquire into Forms of Proceeding in Civil Causes by Jury, and report thereon

LVI. And be it enacted, That it shall be lawful, and full Power is hereby given to such Persons as shall for that Purpose, and at such Time or Times as his Majesty shall think fit to name and appoint them, be named and appointed by his Majesty, by Letters Patent, or any Instrument in Writing under his Royal Sign Manual, or any Three of them, to meet at and upon such Place and Day as in such Letters Patent or Instrument shall be for that Purpose named, or at and upon such Place and Day as they, or any Three of them, giving Notice to the others of them, shall appoint, and so thereafter as they or those present from Time to Time at Meetings shall appoint, and to make all such Inquiries as they shall be directed by his Majesty in Instructions annexed to the said Letters Patent or Instrument under the Royal Sign Manual, into the Forms of Proceeding in Trials of Civil Causes by Jury in



*Scotland*, and to report to his Majesty whether these Forms of Proceeding may be improved, and at what Time and in what Manner the Union of the Benefit of Jury Trial in Civil Causes with the Jurisdiction of the Court of Session may be best accomplished, and to set down in Writing what shall appear to them to be material to be reported touching the Matters aforesaid, with their Opinions upon the same, together with the Evidence or Information which they may in the Course of their Inquiry receive.

LVII. And be it further enacted, That from and after the passing of this Act, all Questions and Matters in *Scotland* relating to Prize and Capture in War, and the Condemnation of Ships and Vessels as such, shall be vested solely in the High Court of Admiralty of *England*; and that the High Court of Admiralty of *Scotland* shall not in future exercise such Jurisdiction; any Law or Practice to the contrary notwithstanding.

LVIII. And be it further enacted, That within Fourteen Days from the Commencement of every future Session of Parliament, there shall be transmitted to both Houses of Parliament Copies of all Acts of Sederunt settling the Rules of Proceedings of the Courts of *Scotland*, as fixed under the Powers herein given.

*Questions as to  
Prize in War.*

All Questions in  
*Scotland* relating  
to Prize in War, to  
vest solely in Court  
of Admiralty of  
*England*.  
1 W. 4, c. 69, § 21.

Acts of Sederunt  
to be transmitted  
to Parliament.

## 7° GEORGII IV. REGIS.

### CAP. VIII.

*An Act to amend so much of an Act of the last Session of Parliament, for regulating the Qualification and the Manner of enrolling Jurors in Scotland, and of choosing Jurors in Criminal Trials there, and to unite Counties for the Purposes of Trial in Cases of High Treason in Scotland, as relates to the Qualification of special Jurors.*—[22d March 1826.]

WHEREAS an Act was passed in the last Session of Parliament, intituled, *An Act to regulate the Qualification and the Manner of enrolling Jurors in Scotland, and of choosing Jurors on Criminal Trials there, and to unite Counties for the Purposes of Trial in Cases of High Treason in Scotland*, by which it was among other Things enacted, that as soon as a Roll or List of Jurors, qualified as therein directed, should have been made up and inserted in the General Jury Book, the Sheriff and Stewart of every County and Stewartry in *Scotland* should select therefrom the

[Enrolment of  
Jurors. Amends 6  
G. 4, c. 22.]

Special Jury Roll.

55 G. 3, c. 42,  
§ 20-27 & § 36.  
See 59 G. 3, c. 35,  
§ 26.

Additional Num-  
ber of special  
Jurors qualified.

In what Manner  
special Jurors  
shall be selected.

Names of all Persons qualified to be special Jurors, in Terms of an Act passed in the Fifty-fifth Year of the Reign of his late Majesty King *George* the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending of Trial by Jury to Civil Causes*; and such Names so selected should be entered in a Book, to be called the Special Jury Book, to be kept in the said Sheriff or Stewart Clerk's Office of each County or Stewartry, and be open for Inspection in the Manner therein directed; and the Persons whose Names should be entered in such Special Jury Book, should be liable to serve as special Jurors in all Civil Causes ordered to be tried by special Jurors, and on all Criminal Trials as therein directed: And whereas in some Counties in *Scotland* a sufficient Number of special Jurors, qualified as aforesaid, cannot be found; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, every Person residing within any County or Stewartry in *Scotland*, who shall be infest in and possessed of Lands and Heritages in any Part of *Scotland*, yielding the Sum of One hundred Pounds Sterling of real Rent per annum, or upwards, at the Time, and also every Person residing within any County or Stewartry in *Scotland*, who shall be possessed of personal Property to the Amount of One thousand Pounds Sterling, or upwards, shall be qualified to serve as a special Juror in *Scotland*, inclusive of and in addition to those Persons qualified to serve as special Jurors in Terms of the aforesaid Act passed in the Fifty-fifth Year of the Reign of his late Majesty.

II. And be it enacted, That as soon as conveniently may be after the passing of this Act, the Sheriff of every County in *Scotland* shall select from the List of Jurors contained in the General Jury Book of the County whereof he is Sheriff, the Names of all Persons qualified to be special Jurors in Terms of this Act; and such Names so selected shall be entered in the Special Jury Book of such County, as Persons liable to serve as special Jurors: Provided always, that in making such Selection the Sheriff shall take the Names of such Jurors in the Order in which they stand in the said General Jury Book, and shall enter the said Names in the same Order in the Special Jury Book, immediately after the Names which shall have been entered in the said Special Jury Book at the Time of the passing of this Act; and provided also, that in case the Names of special Jurors

entered in the Special Jury Book shall have been all returned to serve as Jurors before the Names contained in the General Jury Book shall in like Manner have been gone through, the Sheriff, in making Returns of special Jurors, shall recommence to take the Names from the Top of the List entered in the Special Jury Book, and shall so return the Names in their regular Order in which they stand in the said Book, until new Lists shall be prepared.

III. And whereas in some Counties in *Scotland* the Number of Persons qualified to serve as special Jurors, in Terms of the said Act passed in the Fifty-fifth Year of his late Majesty, and of this Act, may be so great as not to leave a sufficient Number to serve as ordinary Jurors in Criminal Trials; be it enacted, That the Number of special Jurors to be entered at any Time in the Special Jury Book, for any County, shall not exceed One-third of the total Number of common Jurors entered in the General Jury Book of such County, after the Names of the Special Jurors shall have been deducted therefrom: Provided always, that any Juror who, although qualified to serve as a special Juror, may, in consequence of this Provision, not have his Name entered in the Special Jury Book, shall be deemed to be and shall serve as a common Juror.

IV. And be it further enacted, That in case any Person whose Name shall have been entered either in the said General Jury Book, or in the said Special Jury Book, shall die, or become disqualified as a Juror, whether from Loss of Property, Absence, or other legal Cause, it shall and may be lawful for the Sheriff, in making Returns of Jurors, as directed by the said recited Act, to pass over the Name of every such Person, provided the Date at which the Name of such Person shall have been so passed over, and the Reason thereof, shall be entered at the Time in the said General Jury Book or the said Special Jury Book, as the Case may be.

V. And be it further enacted, That this Act, and the said recited Act passed in the last Sessions of Parliament, shall be construed and receive Effect together, in the same Manner as if this Act had made Part of the said recited Act.

*Special and Common Jurors.*

The Number of special Jurors shall not exceed One-third of the Number of common Jurors.

Proviso as to Jurors qualified as Special but not so entered.

Names of Jurors dying or becoming disqualified may be passed over.

This Act and recited Act 6 G. 4, c. 22, to be construed together.

Protection of Jus-  
tices.

## 7° &amp; 8° GEORGII IV. REGIS.

## CAP. LIII.

[As to Notice and  
Limitation of  
Actions against  
Officers of Excise.]

*An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland.*—[2d July 1827.]

[This Act is printed in Book I., Exchequer.]

## 9° GEORGII IV. REGIS.

## CAP. XXIX.

*An Act to authorize additional Circuit Courts of Justiciary to be held, and to facilitate Criminal Trials in Scotland.*—[19th June 1828.]

Provisions of 43  
G. 3, c. 141, ex-  
tended to all in-  
ferior Judges.  
See 24 G. 2, c. 44.  
43 G. 3, c. 141.  
Ex by 11 G. 4 &  
1 W. 4, c. 87,  
§ 13. See also 5 &  
6 V., c. 97.

§ XXVI. And be it enacted, That the Provisions of an Act made in the Forty-third Year of the Reign of his late Majesty King George the Third, intituled, *An Act to render Justices of the Peace more safe in the Execution of their Duty*, shall extend to all inferior Judges and Magistrates in Scotland, in regard to any Sentence pronounced, or Proceeding had in any Criminal Trial.

## 9° GEORGII IV. REGIS.

## CAP. XLIX.

[See 23 & 24 V.,  
c. 127, § 15.]

*An Act to amend the Laws in force relating to the Stamp Duties on Sea Insurances, on Articles of Clerkship, on Certificates of Writers to the Signet, and of Conveyancers and others, on Licenses to Dealers in Gold and Silver Plate and Pawnbrokers, on Drafts on Bankers, and on Licenses for Stage Coaches in Great Britain; and on Receipts in Ireland.*—[15th July 1828.]

Penalty for acting  
after 31st October  
1828 without a  
Certificate or with-  
out entering it, or  
for delivering in  
an erroneous Place  
of Residence.

§ IX. And be it further enacted, That from and after the said Thirty-first Day of October One thousand eight hundred and twenty-eight, if any Person whatever (not being entitled to any special Exemption from the Duties on such Certificates) shall, for or in expectation of any Gain, Fee, or Reward, directly or indirectly, by himself or by any other Person acting for him, and whether in his own Name or in the Name of any other Person, sue out any Writ or Process, or commence, carry on, or defend any Action, Suit, or Proceeding, or do any Act whatever in any Court in Scotland, as a Solicitor, Agent,

Attorney, or Procurator of such Court, or shall act as a public Notary, or exercise the Office of a Notary in any Manner, or shall do any notarial Act whatever in *Scotland*, without having first duly obtained a proper stamped Certificate in the Manner hereinbefore directed, or without having caused the same to be entered in the appropriate Book, Roll, or Record as aforesaid, or shall deliver to the proper Office of Stamps any Paper or Note in Writing misrepresenting the Place of his Residence, or the Time of his First Admission in any such Character or Capacity as aforesaid, with intent to evade the Payment of any Duty or Rate of Duty payable on such Certificate, every such Person shall for every such Offence forfeit and pay the Sum of Fifty Pounds, and shall also be incapable of maintaining or prosecuting any Action, Suit, or Proceeding in any Court of Law or Equity, for the Recovery of any Fee, Reward, or Disbursement, upon account of or with relation to any Business, Matter, or Thing performed, executed, directed, or conducted by him in any Character or Capacity requiring a Certificate.

*Attorney's Certificates. Evidence.*

## 11° GEORGII IV. &amp; 1° GULIELMI IV.

## CAP. XXXVII.

*An Act to amend an Act of the Ninth Year of his late Majesty King George the Fourth, to facilitate Criminal Trials in Scotland, and to abridge the Period now required between the pronouncing of Sentence and Execution thereof, in Cases importing a capital Punishment.*—[16th July 1830.]

§ IX. And be it enacted, That where any Person [who] hath been or shall be convicted of any Crime (except Perjury or Subornation of Perjury), and shall have endured the Punishment to which such Person shall have been sentenced for the same, such Person shall not thereafter be deemed, by reason of such Conviction or Sentence, an incompetent Witness in any Court or Proceeding, Civil or Criminal.

§ XI. And be it enacted, That in preparing the Return ordered by this Act, and in making up Lists of Jurors, in Terms of an Act passed in the Sixth Year of the Reign of his late Majesty King George the Fourth, intituled, *An Act to regulate the Qualification and the Manner of enrolling Jurors in Scotland, and of choosing Jurors on Criminal Trials there, and to unite Counties for the Purposes of Trial in Cases of High Treason in Scotland*, the Sheriffs of Counties shall only employ such Persons to assist in the Discharge of the Duty as shall be authorized by the Court of Exchequer in *Scotland* according to a Regulation to be established by that Court; and such Persons shall not receive any Remuneration for the said Duty, other than such as may be fixed by a Table to be prepared and sanctioned by the Court of Exchequer for that Purpose, which Table the said Court is hereby required to cause to be prepared and to sanction accordingly.

§ XIII. And be it enacted, That the said recited Act passed in the Ninth Year of the Reign of his late Majesty, in so far as it provides for rendering all inferior Judges and Magistrates more safe in the Execution of their Duty, shall extend to all Acts done by any such Judge or Magistrate in apprehending any Party, or in regard to any Criminal Cause or Proceeding, or to any Prosecution for a pecuniary Penalty.

Conviction for a Crime not to disqualify a Witness. *Am. and Ext. by 15 V., c. 27, § 1. See 9 G. 4, c. 32, § 3, 4, Book IV.*

As to preparing Returns ordered by this Act, and making up County Lists of Jurors under 6 G. 4, c. 22

Provisions of 9 G. 4 extended to inferior Judges, etc., in certain Cases.

*Ext. 43 G. 3, c. 141; 9 G. 4, c. 29, § 26.*

*See 24 G. 2, c. 44; 5 & 6 V., c. 97.*

*Recitals, etc.*

## 11° GEORGII IV. &amp; 1° GULIELMI IV..

## CAP. LXIX.

[Jury, Admiralty,  
and Commissary  
Courts Abolition,  
1830. See A. of S.  
regulating Jury  
Procedure, 16 Feb.  
1841; 8 July 1823;  
and A. of S. 10  
July 1844;  
24 Feb. 1846;  
18 July 1850;  
22 June 1859.]  
55 G. 3, c. 42.

*An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the Judicial Establishments of Scotland.—*  
[23d July 1830.]

59 G. 3, c. 35.

6 G. 4, c. 120.

WHEREAS an Act was passed in the Fifty-fifth Year of the Reign of his Majesty King George the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes*; by which Act certain Commissioners were appointed for the Trial of such Causes, and certain Regulations made in regard to such Trials: And whereas another Act was passed in the Fifty-ninth Year of the Reign of his said Majesty, intituled, *An Act to amend an Act passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, "An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes:"* And whereas another Act was passed in the Sixth Year of the Reign of his late Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland*; by which last Act certain Provisions were made relative to the Constitution of the Jury Court, and which Provisions are declared to continue and be in force until the Thirtieth Day of June in the Year One thousand eight hundred and thirty, and from thence to the End of the next Session of Parliament; and it is further provided by the said last recited Act, that it should be lawful for his Majesty to appoint such Persons as he should think fit, to make all Inquiries, as they should be directed, by Instructions from his Majesty, into the Forms of Proceeding in Trials of Civil Causes by Jury in Scotland, and to report whether these Forms may be improved, and at what Time and in what Manner the Union of the Benefit of Jury Trial in Civil Causes with the Jurisdiction of the Court of Session may be best accomplished: And whereas pursuant to the said last recited Act his late Majesty did, by an Instrument under his Royal Sign Manual, appoint certain Persons to make the Inquiries set forth in the said last recited Act, as more particularly specified in Instructions annexed to the said Instrument under the Royal Sign

Manual: And whereas the said Commissioners so appointed made a Report to his late Majesty upon the Subject Matters into which they were appointed to inquire; which Report has been laid before both Houses of Parliament: And whereas it is expedient that the said recited Acts should be altered, amended, and continued in certain Parts, and that Provision should be made for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session in *Scotland*; and that in so doing Advantage should be taken of the Knowledge and Experience of the present Lord Chief Commissioner and of the other Lords Commissioners of the Jury Court: And whereas it is also expedient that certain other Alterations and Reductions should take place in the judicial Establishments of *Scotland*: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the fifth Day of *October* next after the passing of this Act, the Jurisdiction for Trial by Jury in Civil Causes shall be united with and shall form Part of the ordinary Administration of Justice in the Court of Session in *Scotland*; and the Trial of Causes by Jury shall take place in the Court of Session as hereinafter directed: Provided always, that the Jury Court and the Jurisdiction thereof shall continue as now constituted until the said Date, after which it shall cease and determine; but without Prejudice to the present Lord Chief Commissioner and the other Lords Commissioners of the Jury Court respectively continuing to perform the Duties hereinafter directed.

II. And be it enacted, That from and after such Union all Causes and Issues, which, if they had occurred before the passing of this Act, must by Law have been tried by Jury in the Jury Court, shall be tried by Jury in the Court of Session; and such Causes shall be prepared for Trial by the Lords Ordinary respectively before whom such Causes shall depend.

III. And be it enacted, That from and after the Period when such Union shall take place as aforesaid, the Lords President of the Two Divisions shall respectively try by Jury all Issues arising out of Causes depending in these Divisions respectively when such Trials take place at *Edinburgh*; and may otherwise respectively discharge all Duties previously assigned to the Lord Chief Commissioner, in so far as may regard such Causes, not being inconsistent with the Provisions of this Act: Provided always, that it shall

*Regulation of Jury Trials.*

From Oct. 5, 1830, Trial by Jury in Civil Causes shall be united with the ordinary Administration of Justice in the Court of Session in *Scotland*.

*Issues and Trial.*  
13 & 14 V., c. 36,  
§ 36-45; 20 & 21  
V., c. 56, § 8.

*Exceptions.*  
7 W. 4, c. 14;  
13 & 14 V., c. 36,  
§ 45.

*Verdict.*  
17 & 18 V., c. 59,  
22 & 23 V., c. 7.  
*See A. of S.* 16  
Feb. 1841.

Causes to be prepared by the Lords Ordinary, and tried by Jury in the Court of Session.  
13 & 14 V., c. 36,  
§ 36-45; 20 & 21  
V., c. 56, § 8.

Lords President to try all Jury Causes originating in their respective Divisions.

*Am. by* 13 & 14 V.,  
c. 36, § 41; 20 &  
21 V., c. 56, § 8.

Lord Chief Commissioner to con-

*Regulation of Jury Trial.*

tinue to perform his Duties relative to Trial of Civil Causes.

Provision in case of Absence of Lord President.

Lord President may proceed to Trial without Judge of Jury Court.

Application for Trial.

*Am. by 18 & 14 V., c. 86, § 40, 41.*

Lord President may direct Issues to be tried before his Division of the Court.

*Temporary (?)*

Proceedings in Error to be taken before the Division to which the Cause belongs.

continue to be competent to the said Lord Chief Commissioner to perform all such Duties; and farther, that for the Space of Three Years from and after the Time when such Union shall take place, there shall be present and form a component Part of the Court, upon all Occasions when either of the Lords President of the Two Divisions of the Court of Session shall respectively try by Jury any Issue arising out of a Civil Cause, either the Lord Chief Commissioner of the Jury Court, or One of the Judges of the Court of Session, who at the Time of such Union shall have held the Office of One of the Lords Commissioners of the Jury Court; and provided farther, that in the Event of the Indisposition or necessary Absence of either of the said Lords President, such Issues shall, during the foresaid Space of Three Years, be tried either by the said Lord Chief Commissioner along with One of the Judges of the Court of Session, or by at least Two Judges of the Court of Session, whereof there shall be One of the said Judges of the Jury Court; and that from and after the Expiration of that Period, such Issues shall in the said Events be tried by any other Judge or Judges of the Division of the Court before which the Cause may depend.

IV. Provided always, and it is hereby enacted, That if the Judges of the Court of Session who had held the Office of Commissioners of the Jury Court shall, before the Expiry of Three Years, be reduced to Two, it shall be competent to the Lord President of either Division to proceed to Trial, if he think fit, without any Judge who has formerly been of the Jury Court, and they are hereby empowered so to proceed.

V. And be it enacted, That it shall and may be lawful for either Party to apply to the Division of the Court to which a Cause belongs, that the Issue or Issues shall be tried before such Division; and such Division may or may not, in its Discretion, order such Cause to be so tried.

VI. And be it further enacted, That the Lord President of each Division of the Court shall have Power, and he is hereby authorized and empowered, to order and direct that any Issue or Issues shall be tried before the Division of the Court to which he belongs: Provided always, that for the Space of Three Years as aforesaid, either the Lord Chief Commissioner or One of the foresaid Judges of the Jury Court shall be One of the Court on Occasion of such Trials.

VII. And be it enacted, That all Proceedings for the Correction of Errors or Injustice alleged to have been committed in the Trial of a Cause, and all Questions reserved for Decision after Trial, and all Questions relating



to the Application of the Verdict, or the Rights and Interests arising therefrom, and all Questions of Expenses, shall proceed before the Division of the Court to which the Cause belongs: Provided always, that such Division shall have Power to order a Hearing before the whole Court of Session, or to require the Opinions of the other Judges, on such Points or Questions as such Division may deem proper.

VIII. And be it enacted, That the said Lord Chief Commissioner shall be empowered and have Right to sit and vote in both Divisions of the Court as a Judge of the Court of Session, in the before recited and all other Proceedings touching any Cause now triable in the Jury Court, both before and after Verdict, and shall be entitled to rank immediately after the Lord Justice Clerk.

IX. And be it enacted, That Trials by Jury may proceed at all such Times, as well during Session as in the Vacation, as the Division of the Court before which the Cause stands inrolled shall appoint; and all Causes remaining untried and entered as ready for Trial, at the Termination of the Winter or Summer Sessions, or at the Commencement of the Christmas Recess, shall be tried at Sittings of the Court to be held immediately after these Periods respectively, excepting only such Causes as, on the Motion of any Party, the Court may think fit to postpone.

X. And be it enacted, That it shall and may be lawful for his Majesty, his Heirs and Successors, with Consent of his Privy Council, and he is hereby empowered, if he shall think fit, to order and direct that the Winter and Summer Sessions of the Court of Session, or either of them, shall be extended, and to specify the Time or Times of such Extension, and the precise Duration thereof, and to direct that such Extension shall apply either to the whole Court of Session, or exclusively to the permanent Lords Ordinary: Provided always, that such Extension shall not on the whole exceed the Space of One Calendar Month in the Course of the Year; and that it shall in like Manner be lawful for his Majesty thereafter to direct that such Extension be diminished as to Duration, and altered or varied as to the Time or Times when the same shall take place, and that the Sessions shall in like Manner be again extended as Occasion may require, and the said Court, or the permanent Lords Ordinary, shall sit at the Time or Times and during the Period or Periods which may be so ordered by his Majesty; and for the Information of his Majesty in this Behalf, the Lord President of the Court of Session is hereby required, on or before the Fifteenth Day of January in every Year, to transmit to One of his Majesty's principal Secretaries of State a Return, according to the Form prescribed

*Jury Trial. Extension of Sessions.*

55 G. 3, c. 42, § 7;  
59 G. 3, c. 85, § 17.

Lord Chief Commissioner to sit as a Lord of Session in Jury Cases.

Trials by Jury may proceed when the Division is not sitting.

*Am.* 59 G. 3, c. 85, § 22; 6 G. 4, c. 120, § 36.

*See* 13 & 14 V., c. 86, § 41; *A. of S.* 24 Feb. 1846, as *am.* by 22 June 1859.

Provision for extending the Winter and Summer Sessions.

*Am.* by 2 & 3 V., c. 86, § 10, 11.

*Trials on Circuit,  
etc.*Trial of Issues be-  
fore Courts.*Circuits.**Am. 55 G. 8, c. 42,  
§ 15; 59 G. 8, c.  
35, § 22.*Clerks in Jury  
Court.Reduction of  
Clerks, etc., in the  
Court of Session.Appointment of  
Depute Clerks to  
be in his Majesty.Certain Causes to  
be exempted from  
the Fee Fund.

in the Schedule hereunto annexed ; which Return shall be laid before both houses of Parliament.

XI. And be it enacted, That all Causes or Issues appointed to be tried before any Circuit Court shall and may be so tried before any One or more of the Judges of the Court of Justiciary when upon Circuit ; and at all Trials before any Circuit Court the Jury shall be taken from the Lists prepared for the Trial of Criminal Offences : Provided always, that it shall be competent to either Division of the Court of Session, if in their Judgment it shall be considered necessary, to direct any Causes or Issues to be tried by any other Judge or Judges of the Court of Session at any Circuit Town, and if necessary for the Trial of the same to cause Jurymen to be summoned in the Manner provided by the before recited Acts.

XII. And be it enacted, That the Clerks and Macers of the Jury Court shall continue to discharge the Duties of their respective Offices in the Court of Session, after such Union, as well at *Edinburgh* as on the Circuits ; and that all other inferior Offices in the Jury Court shall be and the same are hereby abolished.

XIII. And be it enacted, That the Two Vacancies which shall next occur in the Office of principal Clerk of Session, as also in the Office of Depute Clerk of Session, shall not be supplied ; and that in like Manner the Vacancies in the Offices of the other Clerks belonging to the Court of Session shall not be supplied until the total Number of such Clerks, including those connected with Proceedings in Trial by Jury, shall not exceed the Number of Clerks exclusively belonging to the Court of Session at the passing of this Act ; and it shall be lawful for the said Court, from Time to Time as said Vacancies occur, to make such Regulations as may be necessary for duly apportioning the Duty among the remaining Clerks ; and it is provided that as Vacancies shall occur in the Office of Macer, the Number of Macers shall be reduced, so that they shall not exceed the Number of Macers officiating exclusively in the Court of Session at the passing of this Act.

XIV. And be it enacted, that the Appointment of Depute Clerks and of Assistant Clerks of Session shall be vested in his Majesty ; and it is hereby provided, that during the necessary Absence of any principal Clerk of Session it shall be competent for any Depute Clerk of Session to discharge the Duties of such principal Clerk.

XV. And be it enacted, That no Payment on account of the Fee Fund of the Court of Session, nor any Fee or Demand by any Clerk or Officer of that Court, shall be exi-

gible in respect of any Step or Proceeding in any Cause which might not have been exigible if such Cause had been brought into the Jury Court previously to the passing of this Act.

XVI. And it is further enacted, That all the Provisions of the foresaid recited Acts now in force, in so far as not inconsistent with this Act, shall be continued and remain in force until altered or revoked by Parliament, and that all Rules and Regulations in observance in the Jury Court at the Time of the Union of Jury Trial in Civil Causes with the Administration of Justice in the Court of Session, established and enforced by Act of Sederunt, shall continue and be observed as Rules and Regulations applicable to the Court of Session after such Union, until the same shall be altered by Acts of Sederunt; and it is hereby provided, that the said Court of Session shall have full Power and Authority, by Acts of Sederunt, to make all Regulations for duly adapting the Forms previously observed in the Jury Court to the Proceedings in the Court of Session, and afterwards to alter and amend such Regulations when necessary: Provided always, that such Regulations be not inconsistent with the Provisions of this or any other Act of Parliament now in force; and that all Acts of Sederunt authorized by this Act to be made shall be laid before Parliament, if sitting, within Fifteen Days from the respective Dates thereof, and if Parliament be not sitting, within Fifteen Days from and after the next Meeting of Parliament.

XVII. And be it enacted, That in the Event of the Death or Resignation of the said Lord Chief Commissioner, or of any of the other Lords Commissioners of the Jury Court, no Successor shall be appointed to any such Judge or Judges as Commissioner of the Jury Court.

XVIII. And be it enacted, That from and after the Termination of the present existing Interest in the Office of Lord Justice General, that Office shall devolve upon and remain united with the Office of Lord President of the Court of Session, who shall perform the Duties thereof as presiding Judge in the Court of Justiciary; and that the Salary attached to the Office of Lord Justice General shall cease, and that the Appointment of Macers of the said Court shall be vested in his Majesty.

XIX. And be it enacted, That when the Office of Lord Justice General shall have devolved upon the Lord President of the Court of Session, and when he shall deem it expedient to be present at any Circuit Court, it shall be lawful for him to dispatch Business in such Court, whether any other Judge or Judges of the Court of Justiciary be or be not present; anything contained in an Act of the Parlia-

#### *Judicial Arrangements.*

Provisions of above recited Acts to remain in force where not inconsistent with this Act.

*Acts of Sederunt to remain in force.*

Acts of Sederunt to be laid before Parliament.

No Successors to be appointed to the present Jury Court Judges.

Office of Lord Justice General to devolve on Lord President.

In such Case Lord President to dispatch Business in any Circuit Court notwithstanding Act of the Scotch Parliament 1672, c. 40, (c. 16 § 5, *Vel. Ed.*) or 20 G. 2, c. 43.

*Admiralty Jurisdiction.*Office of Judge  
Admiral abolished.Provision for de-  
pending Actions.

to that of another Sheriff ob Contingentiam, or for other sufficient Cause.

XXV. And be it enacted, That from and after the Commencement of this Act, the Office of the Judge Admiral shall be and the same is hereby abolished, as also the Offices of all Clerks and Officers belonging to that Court; and it is hereby provided, that all Actions and Proceedings which shall be depending on the said Fifth Day of *October* before the High Court of Admiralty shall be transferred to the Sheriff of any Court wherein such Action and Proceeding might have originated if this Act had been passed previously to the Commencement of such Actions or Proceedings, and the same shall thereupon be heard and determined in the same Manner as if they had been brought before such Sheriff in the first Instance; and as soon as conveniently may be after the said Fifth Day of *October*, the Processes in all such depending Actions shall be transmitted accordingly to such Sheriff by the Clerk of the High Court of Admiralty, together with an Inventory made by the said Clerk, to the Accuracy whereof he shall make Oath if required: Provided always, that if any Doubt shall arise touching the Transmission of any such Process, it shall be competent to the Clerk of the High Court of Admiralty, or to any Party in any such Cause, to apply to the Lord Ordinary on the Bills, who shall give Directions thereupon, and whose Directions shall be final; and provided also, that when the Parties to any such Cause shall, previously to such Transmission, give in a joint Note to the said Clerk, setting forth their Wish that such Cause should proceed in the Court of Session instead of being so transferred to the Sheriff, and shall therein specify the Lord Ordinary by whom they are desirous that such Cause should be decided, the Clerk of the High Court of Admiralty shall thereupon transmit the Process, together with the said Note, to One of the principal Clerks of Session, and such Cause shall be inrolled before such Lord Ordinary, and shall thereafter be heard and determined in the same Way as if such Cause had been instituted in the Court of Session in Terms of this Act.

Provision as to  
other Processes.

XXVI. And be it enacted, That as soon as conveniently may be after the Fifth Day of *October* next, after the passing of this Act, all other Processes, Records, and Warrants of Decrees, together with an Inventory thereof made by the Admiralty Clerk, which he is hereby required to make, and to make Oath to the Accuracy thereof if required, shall be transmitted to the General Register House at *Edinburgh*.

Sheriff Clerks to  
act as Clerks to  
Sheriffs in Mari-  
time Causes.

XXVII. And be it enacted, That the Sheriff Clerks of the several Counties of *Scotland* shall respectively act as Clerks to the Sheriffs in Maritime Causes: Provided always,

that neither that Officer, nor any other Person appointed to any Office, or acquiring Right to any Fees or Emoluments in virtue of the Provisions of this Act, shall be entitled to prefer any Claim to Compensation in consequence of the subsequent Abolition of such Office or Fees, or of any Alteration therein.

*Commissary Courts,  
etc.*

XXVIII. And be it enacted, That it shall and may be lawful for all Persons entitled, before the passing of this Act, to conduct Causes as Procurators before the High Court of Admiralty in *Scotland*, and all such Persons are hereby authorized, during their respective Lives, to conduct, as Agents before the Court of Session, all or any Causes and Proceedings whatsoever which are or may be competently heard and determined in that Court.

Procurators in  
Admiralty Court.  
*A. of S.* 21 Dec.  
1833. *Infra*, § 39.

XXIX. And be it enacted, That all inferior Admiralty Jurisdiction, not dependent upon the High Court of Admiralty, shall continue as heretofore, but the Judgments of such Courts shall be subject to Review solely in the Courts of Session and Justiciary respectively: Provided always, that nothing herein contained shall extend or be construed to extend to lessen or take away any Salary or Allowance now payable to the Sheriff Substitute of the District of the Town of *Leith* by the Commissioners of Police of the said Town, but the same shall continue to be paid as heretofore.

As to inferior  
Admiralty Juris-  
diction.  
*Supra*, § 23.

XXX. And be it enacted, That so much of an Act passed in the Fourth Year of the Reign of his late Majesty King George the Fourth, intitled, *An Act for the Regulation of the Court of the Commissaries of Edinburgh, and for altering and regulating the Jurisdiction of inferior Commissaries in Scotland*, as provides that the Sheriffdoms of *Edinburgh*, *Haddington*, and *Linlithgow* shall be the Commissariat of *Edinburgh*, be repealed; and that the Commissariat of *Edinburgh* shall comprehend only the Sheriffdom of *Edinburgh*; and it is hereby provided, that the Sheriffdoms of *Haddington* and *Linlithgow* shall each constitute a Commissariat, and that the whole other Provisions of the said recited Act shall apply to the said Sheriffdoms of *Haddington* and *Linlithgow* in the same Way in all respects as the same apply to the other Sheriffdoms of *Scotland* where the Sheriff is Commissary.

Each of the  
Sheriffdoms of  
*Edinburgh*, *Had-  
dington*, and *Lin-  
lithgow* to consti-  
tute a Commis-  
sariat.

XXXI. And be it enacted, That the Commissary Court of *Edinburgh* shall possess and exercise the same and no other Jurisdiction in the Sheriffdom of *Edinburgh* than that possessed and exercised by Sheriffs being Commissaries in other Sheriffdoms of *Scotland*; and that any Jurisdiction of a more extensive Nature heretofore possessed or exercised by the Commissary Court of *Edinburgh* shall entirely cease, save and except such as may regard the granting of Con-

Jurisdiction of  
Commissary Court  
of *Edinburgh* re-  
stricted.  
*Infra*, § 82, 83.

*Consistorial Jurisdiction.**Actions of Alim-*

*ment.*  
*See St. 1696, c. 21;*  
*A. of S. 11 Dec.*  
*1828, § 98-100.*

*Consistorial Actions to be instituted in the Court of Session.*

*Ext. by 13 & 14 V., c. 36, § 16.*

*See 21 & 22 V., c. 93, § 9; St. 1573, c. 55; 1600, c. 20.*

*Transmission of consistorial Processes.*

*Regulation as to Causes transmitted.**Review.*

*6 G. 4, c. 120, § 5, 18; 13 & 14 V., c. 36, § 11.*

*Regulations in regard to consistorial Actions.*

*Oath of Calumny.*  
*Ex parte Proofs.*

*As to Trial of such Causes by Jury.*

*Infra, § 38, 41.*

*Oaths.*

*See Evidence Acts.*

*Regulations as to Proofs.*

firmation of Testaments of Persons dying furth of *Scotland*, having personal Property in *Scotland*, which Jurisdiction is hereby reserved to the said Court.

XXXII. And it is further enacted, That Actions of Aliment may be instituted, heard, and determined in any Sheriff Court of *Scotland*.

XXXIII. And be it enacted, That all Actions of Declarator of Marriage, and of Nullity of Marriage, and all Actions of Declarator of Legitimacy and of Bastardy, and all Actions of Divorce, and all Actions of Separation a Mensa et Thoro, shall be competent to be brought and insisted on only before the Court of Session.

XXXIV. And be it enacted, That all such Actions which shall be depending before the Commissary Court at the Commencement of this Act, shall be transmitted to the Lord President of the Court of Session: Provided always, that where a Proof shall have been allowed by the said Court of the Commissaries previously to the Commencement of this Act, such Proof shall be concluded before such Action shall be transmitted as herein directed.

XXXV. And be it enacted, That the Lord President shall remit all Causes so transmitted to such Lord Ordinary as he may think fit for Preparation and Judgment; and the Judgments of the Lords Ordinary, in these and in all other Actions of the same Description instituted in the Court of Session, shall be subject to the Review of the Division of the Court to which the Lord Ordinary may belong, in the same Way as in other Civil Causes.

XXXVI. And be it enacted, That the Lord Ordinary shall in all Actions of Divorce administer the usual Oath of Calumny to the Pursuer; and no Decree or Judgment in favour of the Pursuer shall be pronounced in any of the consistorial Actions hereinbefore enumerated, whether Appearance shall or shall not be made for the Defendant, until the Grounds of Action shall be substantiated by sufficient Evidence.

XXXVII. And be it enacted, That such Causes shall not be appropriate to Trial by Jury, but it shall be competent to either Division of the Court of Session, or to a Lord Ordinary after advising with the Division of the Court to which he belongs, to direct that any such Cause, or any Issue or Issues of Fact connected therewith, be tried by Jury; and it is hereby provided, that in the Swearing of Witnesses in consistorial Causes, the same Oath shall be administered that is in Use in the other Courts of Justice in *Scotland*.

XXXVIII. And be it enacted, That when a Proof in

any such Cause shall be directed to be taken by Commission, the Remit to take such Proof shall be made to the Commissary Court of *Edinburgh*, which Court, or any Judge thereof, shall take such Proofs accordingly, and no Judge thereof shall receive any additional Remuneration on that Account.

XXXIX. And be it enacted, That it shall and may be lawful for the incorporated Solicitors practising before the Consistorial Court of *Edinburgh* previous to the passing of this Act, and they and each of them are and is hereby authorized and empowered, during their respective Lives, to conduct, as Agent or Agents before the Court of Session, all or any Causes or Proceedings, such as have heretofore been carried on before the Court of the Commissaries of *Edinburgh*; which may hereafter be proceeded in, heard, or determined before the Court of Session.

XL. And be it enacted, That Summonses in Maritime and Consistorial Causes instituted in the Court of Session shall be signed by One of the principal or Depute Clerks of Session, and it shall not be necessary that any such Summons should pass the Signet, or require any Concurrence for the public Interest; and it is provided, that for conducting such Causes in the Court of Session no Agent shall be entitled to a higher Rate of Charge for any Part of such Duty than such as would have been legally exigible for the same Duty in the High Court of Admiralty, or in the Court of the Commissaries of *Edinburgh* respectively, before the passing of this Act; and no Fee or Demand on account of the Fee Fund of the Court of Session, or on account of any Clerk or Officer in that Court, shall be due or exigible in any such Cause.

XLI. And be it enacted, That when Vacancies occur in the Offices of the Judges of the Commissary Court of *Edinburgh*, such Vacancies shall not be filled up, and as soon as Vacancies shall occur in the whole of such Offices, the said Court shall be entirely abolished, and the whole Powers and Jurisdiction, as then competent to the said Court, shall thereupon be transferred to the Sheriff of the County of *Edinburgh*, who shall exercise such Jurisdiction in all respects, and the Provisions of the before recited Act, passed in the Fourth Year of the Reign of his late Majesty King *George* the Fourth, shall apply to the Sherifffdom of *Edinburgh*, in the same Way as such Provisions apply to the other Sherifffdoms of *Scotland*; and it is provided, that when, in consequence of Vacancies in the said Offices, the Number of the Commissaries of *Edinburgh* shall be reduced to One, it shall be lawful for his Majesty's principal Secre

*Consistorial Jurisdiction.*

*Infra*, § 41.  
*Rep. by* 6 & 7 W. 4,  
c. 41, § 2.

Incorporated Solicitors of *Edinburgh* may conduct Causes before the Court of Session.

*See* 6 & 7 W. 4,  
c. 41, § 8; 6 & 7  
W. 4, c. 56, § 21.  
*A. of S.* 21 Dec.  
1888.

*Supra*, § 28.

*Signature of Summons.*

*Am. by* 13 & 14 V.,  
c. 36, § 15.

Agency Fees, etc.

Offices of the Commissaries abolished.

*Am. by* 6 & 7 W. 4,  
c. 41, § 1.

*Certain Sheriffs to take Proofs.*

*Am. by* 13 & 14 V.,  
c. 36, § 26; 6 & 7  
W. 4, c. 41, § 2.

*Salaries and Compensation.*

Two Barons of the Court of Exchequer to be reduced.

Judges of Jury (Court and Admiralty to continue to receive their Salaries.

Certain Payments on account of Jury Courts to cease.

Payment of Salaries of Judges, etc.

tary of State for the Home Department to appoint, from Time to Time, such Number of Persons, being Sheriffs Depute of Counties, as he shall think fit, to take Proofs in Consistorial Causes, which Duty the Persons so appointed shall perform, but without Prejudice to the said remaining Commissary also performing the same; and the said Persons shall not receive any Remuneration on account of such Duty from any Party in any such Cause.

XLII. And be it enacted, That as Vacancies shall occur in the Office of Baron of the Court of Exchequer in *Scotland*, the same shall not be filled up until the Number of such Barons shall be reduced, so that the said Court shall consist only of the Lord Chief Baron and of One Baron of Exchequer; and it is hereby provided, that it shall be competent to these Judges, and to either of them, in the Absence of the other, to exercise the whole Jurisdiction and Powers of the Court of Exchequer, any Law or Practice to the contrary notwithstanding: Provided always, that after the Number of the Judges shall be so reduced, it shall be competent to the said Court, when deemed expedient, to require of the Lord President of the Court of Session that One Judge of that Court shall be directed to attend the Court of Exchequer; and on receiving such Requisition, One of the ordinary Judges of the Court of Session shall attend the said Court of Exchequer, and shall have Voice and Vote in all Matters then to be brought before the said Court, in the same Way in all respects as if such Judge were a Baron of the Court of Exchequer.

XLIII. And be it enacted, That the Lord Chief Commissioner and the other Lords Commissioners of the Jury Court, and the Judge of the High Court of Admiralty in *Scotland*, shall, notwithstanding the Abolition of these several Courts, continue to receive, during their respective Lives, the Salaries payable to them at the Time of the passing of this Act.

XLIV. And be it enacted, That the several Sums of Seven thousand Pounds, Two thousand four hundred Pounds, and One thousand two hundred Pounds, authorized by the before recited Acts to be annually paid on account of the Jury Court, shall cease, save and except so much thereof as shall be certified by the Lord President of the Court of Session to be requisite to be applied in defraying the Expenses attending the Circuits of such of the Judges of the Court of Session as are not Judges of the Court of Justiciary, and of Clerks and Macers, the Application of which Sum shall be accounted for in the Court of Exchequer in *Scotland*; and it is hereby provided, that the Salaries of the Judges, Clerks, and Macers, hitherto paid from



the foresaid Sums, shall be paid, by Order of the said Court of Exchequer, out of the Monies charged or made chargeable by the Acts passed in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer, in *Scotland*.

*Salaries and Compensation.*

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XLV. And be it enacted, That it shall and may be lawful for any Clerk or other Officer holding his Office at the passing of this Act, and entitled to Compensation for Loss to be suffered through the Operation and Effect of this Act, to make Application to the Court of Exchequer in *Scotland*, which Court shall direct Intimation thereof to be given to his Majesty's Advocate in behalf of the Public; and thereafter the said Court shall inquire into and consider the Circumstances of the Case, and shall award to every such Person such Compensation as the Court shall think such Persons entitled to, either by the Payment of a gross Sum or by way of Annuity, as the Court shall think proper: Provided always, that every Order made for such Compensation shall set forth the Nature of the Office, the Grounds on which Compensation is prayed, and on which the Award may be founded; and that a Copy of every such Order shall be laid before Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same; and no such Decision of the said Court shall be final and conclusive until Two Calendar Months after a Copy of the Order of such Court for Compensation shall have been so laid before Parliament; and any Sum of Compensation so to be awarded shall be paid and payable upon the Order of the said Court of Exchequer, in such Manner and at such Time or Times as the Court shall direct, out of the aforesaid Monies charged or made chargeable by the aforesaid Acts passed in the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne*, and every Sum of Compensation shall be clear of all Taxes and Deductions whatsoever.

Compensation to be made to Clerks, etc.

Orders for Compensation to be laid before Parliament.

XLVI. And be it enacted, That the whole Provisions of this Act, unless where otherwise herein specially provided, shall commence and take effect from and after the Fifth Day of *October* next after the passing of this Act.

Commencement of Act.

## SCHEDULE.

**SCHEDULE TO WHICH THIS ACT REFERS.**

RETURN of the Number of CAUSES instituted and decided in the Court of Session in SCOTLAND, between the 1st Day of January 18 and the 1st Day of January 18 ; showing the Number of Causes ready for Judgment, but not disposed of at the last of these Dates.

| OUTER HOUSE.                      |                                                                                                            |                                                                                                                                                                                          |                                                                                               |                                                                                                                                       |                                                                                                                                                                                                                  |               |
|-----------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Names of Lords Ordinary.          | Number of Causes for the first Time inrolled before each Lord Ordinary.                                    | Number of Decrees in Absence.                                                                                                                                                            | Number of Final Judgments pronounced in litigated Causes.                                     | Number of Causes ready for Debate, but not heard; with the Date when the first of these Causes was first inrolled in the Debate Roll. | Number of Causes at Avizandum.                                                                                                                                                                                   | Observations. |
|                                   |                                                                                                            |                                                                                                                                                                                          |                                                                                               |                                                                                                                                       |                                                                                                                                                                                                                  |               |
| INNER HOUSE.                      |                                                                                                            |                                                                                                                                                                                          |                                                                                               |                                                                                                                                       |                                                                                                                                                                                                                  |               |
| —                                 | Number of re-claiming Notes presented against Judgments of Lords Ordinary in the Course of the above Year. | Number of incidental and summary Applications presented during the same Period, distinguishing those which have passed as Matters of Form from such as have been followed by Litigation. | Number of Final Judgments pronounced in litigated Causes, without the Intervention of a Jury. | Number of Causes tried by Jury.                                                                                                       | Number of Causes ready for Judgment on hearing Counsel or otherwise; with the Date when the first of such Causes was so ready, and distinguishing those to be tried by Jury from such as are not to be so tried. | Observations. |
| First Division<br>Second Division |                                                                                                            |                                                                                                                                                                                          |                                                                                               |                                                                                                                                       |                                                                                                                                                                                                                  |               |

A. B., Lord President.

## 1° GULIELMI IV. REGIS.

## CAP. LXXIII.

*An Act to repeal so much of an Act of the Sixteenth Year of his late Majesty King George the Third, for the more effectual Prevention and Punishment of blasphemous and seditious Libels, as relates to the Sentence of Banishment for the Second Offence; and to provide some further Remedy against the Abuse of publishing Libels.*—[23d July 1830.]

[See 1 & 2 Vict.,  
c. 114.]

§ I. Punishment of Banishment repealed.—II. Amount of Bonds to be given by Persons publishing Newspapers, etc., under 60 G. 3, c. 9, increased.

§ III. And be it further enacted, That if any Plaintiff in any Action for Libel against any Editor, Conductor, or Proprietor of such Newspaper, Pamphlet, or other Paper as aforesaid, shall make it appear by Affidavit to his Majesty's Court of Exchequer that he is entitled to have Execution against the Defendant upon any Judgment in such Action, but that he has not been able to procure Satisfaction by Writ of Execution against the Goods and Chattels of such Defendant, it shall be lawful for the said Court, for the Benefit of such Plaintiff, to order and direct such Proceedings to be had and taken upon such Recognizances or Bonds respectively as would be taken to obtain any Fines or Penalties due to his Majesty, secured by such Recognizances and Bond: Provided always, that the Expense of such Proceedings shall be exclusively borne by such Plaintiff as aforesaid.

Damages due to  
any Plaintiff in any  
Action for Libel  
may be recovered  
upon such Bond.

## 2° GULIELMI IV. REGIS.

## CAP. V.

*An Act to provide for carrying on the Business of the Court of Session in Scotland when interrupted by the Death or necessary Absence of any of the Judges thereof.*—[13th February 1832.]

[Court of Session  
Regulation, 1832.]

**WHEREAS** by the Laws now in force for regulating the Proceedings in the Court of Session in Scotland no sufficient Provision is made for carrying on the Business of the said Court in the Event of the Death, Sickness, or necessary Absence of any of the Lords Ordinary in the Outer House, or in the Event of the Judges in either Division of the Inner House being reduced to less than a Quorum by such Casualties; whereby great Delays and Inconveniences have been suffered, and it is expedient that these should be remedied: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and

*Quorum of Court.*

Judges of the Court of Session empowered to make Regulations for carrying on the Business of the said Court in certain Cases.

Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act it shall be competent to the Judges of the Court of Session, or a Quorum thereof, in the Case of the Death, Sickness, or other necessary Absence of any of the Lords Ordinary of either Division of the Court, or of the junior Lord Ordinary acting as Ordinary on the Bills, to make such Regulations by Act of Sederunt as may be necessary for carrying on the Business of the Outer House, and that either by appointing One of the Judges of either Division of the Inner House to officiate in the Outer House or Bill Chamber during such Absence of any of the above Lords Ordinary, or by appointing a Lord Ordinary of One Division to act in such Case pro tempore as an Ordinary of the other Division.

When the Judges of the Inner House are reduced below a Quorum, they may call in One of the Lords Ordinary to assist.

*Am.* 48 G. 3, c. 151, § 7; 50 G. 3, c. 112, § 82.

II. And be it further enacted, That in case of Death, Sickness, Declinature, or necessary Absence of any of the Judges of the Inner House of either Division, the Number of Judges in such Division shall be reduced to less than a Quorum, it shall be in the Power of the Division so reduced in Number, and they are hereby authorized and required, to call in One of the Lords Ordinary of the same or of the other Division to sit and vote in the Inner House until the Number of Judges in such Division be again increased to a Quorum.

6° & 7° *GUILIELMI IV. REGIS.*

## CAP. XLI.

*An Act to abolish the Commissary Court of Edinburgh, and to regulate the Mode of taking Proofs in Consistorial Causes in Scotland.*—[28th July 1836.]

[Commissary Court Abolition, 1836.]  
1 W. 4, c. 69.

WHEREAS an Act was passed in the First Year of the Reign of his present Majesty, intituled, *An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the judicial Establishments of Scotland*, whereby various Alterations and Reductions were made in the Consistorial Court of Scotland, with a view to the Abolition of the said Court, and the Transference of the remaining Jurisdiction thereof to the Sheriff of the County of *Edinburgh*: And whereas it is expedient that the remaining Jurisdiction of the Com-

missary Court of *Edinburgh* should be abolished, and the Mode of taking Proofs in Consistorial Causes should be regulated: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Commissary Court of *Edinburgh* shall be and the same is hereby abolished, and the whole remaining Powers and Jurisdiction of the said Court shall be and the same are hereby transferred to the Sheriff of the County of *Edinburgh*, who shall possess and exercise such Powers and Jurisdiction in all respects, except in so far as regards taking Proofs in Consistorial Causes; and the whole Clauses, Powers, and Provisions of an Act passed in the Fourth Year of the Reign of his late Majesty King *George* the Fourth, intituled, *An Act for the Regulation of the Court of the Commissaries of Edinburgh, and for altering and regulating the Jurisdiction of the inferior Commissaries in Scotland*, shall apply to the Sherifdom of the County of *Edinburgh*, and to the Clerks and Officers of the said Commissary Court, in the same Way as such Provisions apply to the other Sherifdoms of *Scotland*: Provided always, that the Salaries of the existing Commissaries of the said Commissary Court shall be saved and reserved to each of them during their several Lives; provided further, that such Salary or Salaries shall be accounted pro tanto of any subsequent Salary to which any of the said Commissaries may hereafter acquire Right by virtue of his or their Appointment to any other public Office.

II. And be it enacted, That where it shall be necessary to take Proofs in Consistorial Causes, such Proofs shall be taken by the Sheriffs to be appointed for that Purpose in the Manner directed by the said recited Act.

III. And be it enacted, That it shall be lawful for all Agents duly qualified to practise as such before the Court of Session to practise as Agents in the Sheriff Court of *Edinburgh*, in so far as relates to any of the Proceedings which are transferred by this Act to the Sheriff, in the same Manner and to the same Extent as they might have practised in respect of such Matters in the Commissary Court before the passing of this Act.

IV. And be it enacted, That this Act shall commence and take effect from and after the First Day of *November* One thousand eight hundred and thirty-six.

V. And be it enacted, That this Act may be amended or altered by any Act to be passed during the present Session of Parliament.

*Proofs in Consistorial Causes.*

Commissary Court abolished, and Duties of Commissioners transferred to Sheriff of *Edinburgh*.

4 G. 4, c. 97.

Sheriffs may take Proofs.

1 W. 4, c. 69, § 37, 41.

Ext. by 13 & 14 V., c. 36, § 26.

Agents authorized to practise in Sheriff Court of *Edinburgh*.

See 1 W. 4, c. 69, § 39; 6 & 7 W. 4, c. 56, § 21.

Commencement of Act.

Act may be altered this Session.

*Excambions, etc.*

## 6° &amp; 7° GULIELMI IV. REGIS.

## CAP. XLII.

[The Forms of Procedure here enjoined are virtually superseded by those of 11 & 12 V., c. 36, the Provisions of which are, by § 37, made applicable to this Act. See also 16 & 17 V., c. 94.]  
*Form of Excambion.*  
*Am. by 4 & 5 V., c. 24.*

*An Act to grant certain Powers to Heirs of Entail in Scotland, and to authorize the Sale of Entailed Lands for the Payment of certain Debts affecting the same.*—[28th July 1836.]

§ I. Heirs of Entail in Possession empowered to grant Tacks of any Part of entailed Estates under the Restrictions herein contained.—II. This Act not to restrain any more extensive Powers contained in any Entail.—III. Heirs in Possession may make Excambions of entailed Estates in the Mode herein named.—IV. Provision as to Excambion of Mansion Houses, etc.—V. Tenure of excambed Lands. Excess of Value in any Excambion to the Amount of L.200 to be paid to the Proprietors. In case of any larger Excess, Excambion void.—VI. As to Excambion of entailed Estates under more than One Entail.—VII. Part of entailed Estates may be sold for Payment of Entailer's Debts affecting the Estate.—VIII. Court of Session to inquire into the Particulars, and direct what Portion of Estate shall be sold.—IX. And cause Notice of Sale to be given, and adjust the Conditions thereof.—X. Court of Session to adjudge the Lands sold to the Purchaser, and direct the Disposition of the Purchase Money.—XI. Purchasers, upon Payment of the Money, to have a good Right to the Lands, etc., freed from the Entail.—XII. Lands not sold to continue subject to the Entail.—XIII. Court of Session to direct Purchase Money to be applied to Payment of Debts, etc.—XIV. By whom the Costs of Parties interested and appearing shall be paid.—XV. Any Surplus exceeding L.200 to be laid out in Purchase of other Land, to be limited to same Uses, etc., as Lands sold.—XVI. And the Deed of Entail thereof to be framed at the Sight of the Court of Session.—XVII. And recorded in Register of Tailzies, etc.—XVIII. Application of surplus Monies till invested in Land.—XIX. If under L.200, to be paid to Heir in Possession.—XX. Definition of Terms used in the Act.—XXI. How Notices to be given of Applications under this Act to Court of Session, etc.

## 6° &amp; 7° GULIELMI IV. REGIS.

## CAP. LVI.

[Cessio Bonorum, 1836; amended by 19 & 20 V., c. 79, § 167, 168. See A. of S. 24 Dec. 1838; 11 Dec. 1828, § 101, 102. As to Sheriff Court Procedure, see A. of S. 6 June 1839.]

*An Act for regulating the Process of Cessio bonorum in the Court of Session, and for extending the Jurisdiction of Sheriffs in Scotland to such Cases.*—[13th August 1836.]

WHEREAS it is expedient to regulate the Process of Cessio bonorum in the Court of Session in Scotland, and to extend the Jurisdiction of the Sheriff to such Processes; be it therefore enacted by the King's most Ex-

cellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That after the First Day of *October* One thousand eight hundred and thirty-six every Sheriff within *Scotland* shall possess Jurisdiction in Processes of Cessio bonorum brought before him in Manner hereinafter provided as fully as in any other Action presently by Law competent before him, and the Sheriff Clerk and Messengers at Arms and all Sheriff Officers in the several Sheriffdoms in *Scotland* shall have Power to act in their respective Offices in relation to such Processes.

II. And be it enacted, That if a Debtor has been or shall be charged to pay a Civil Debt, and a Warrant to imprison him has been issued, or if he be liable to Imprisonment under a Decree of a Small Debt Court, or be in Prison or imprisoned and afterwards liberated in respect in these several Cases of a Civil Debt, it shall be competent to such Debtor, on or after the said Thirty-first Day of *October*, to apply for interim Protection and for Decree of Cessio bonorum in the Manner hereinafter provided.

III. And be it enacted, That after the said First Day of *October* such Debtor may present to the Sheriff of the County in which he has his ordinary Domicile a Petition, setting forth that he has been charged, and that a Warrant to imprison has been issued against him, or that he is liable to Imprisonment under a Small Debt Decree, or that he is in Prison, or has been imprisoned and afterwards liberated, in respect of a Civil Debt; that he is unable to pay his Debts, and is ready to surrender his Estates for Behoof of his Creditors, and praying for interim Protection against the Execution of Diligence, and for Decree of Cessio bonorum; in which Petition he shall insert a List of all his Creditors, specifying their Names and Designations and Places of Residence, so far as known to him; and with such Petition he shall produce (as the Case may be) the Schedule of an expired Charge, or a Copy certified by the Clerk of the Small Debt Court, of the Warrant on which he is liable to Imprisonment, or if he be in Prison, or imprisoned and thereafter liberated, a Certificate from the Keeper of the Prison of such Imprisonment and the Date thereof, and of the Liberation.

IV. And be it enacted, That on such Petition being presented the Sheriff shall issue a Warrant appointing the Debtor to publish a Notice in the *Edinburgh Gazette*, intimating that such Petition has been presented, and requiring all his Creditors to appear in Court on a certain Day, being not less than Thirty Days from the Date of the

Petition for Cessio.

Sheriffs to have Jurisdiction as to Cessio bonorum, and Sheriff Clerks and Officers to act therein.

A Debtor against whom a Warrant to imprison is issued, or who is in Prison, etc., may apply for Decree of Cessio.

Debtor may present to the Sheriff of the County in which he lives a Petition praying for Decree of Cessio.

Proceedings upon such Petition.

*Procedure in Sheriff  
Court.*

Gazette Notice, and within Five Days after the Date of such Notice to send Letters to all the Creditors specified in the Petition, containing a Copy of the said Notice (paying the Postage thereof), or, in his Option, to cite them in Terms of Law, and which the Debtor shall do accordingly, and the Sheriff shall farther ordain him to appear on the Day so appointed for the Compearance of the Creditors in Presence of the Sheriff or his Substitute for public Examination; and the Debtor shall, on or before the Sixth lawful Day prior to the Day so appointed, lodge, to be patent to all concerned, a State of his Affairs subscribed by himself, and all his Books, Papers, and Documents relating to his Affairs, in the Hands of the Sheriff Clerk, together with a Copy of the said Gazette, and if the Letters have been sent through the Post Office a Certificate subscribed by his Agent, or by a Messenger or Sheriff Officer and a Witness, stating the Date and the Place where the Letters were put into the Post Office, that the Postage was paid, and that they were severally addressed as specified in the Petition, or an Execution subscribed by a Messenger or Sheriff Officer and One Witness, of Citation of the Creditors to whom such Letters have not been so sent.

Debtor to undergo  
Examination  
before Sheriff.

V. And be it enacted, That on the said Day appointed for the Compearance of the Creditors the Debtor shall appear in public Court in Presence of the Sheriff for Examination as to his Affairs, and the Sheriff shall have Power to put him on Oath or Affirmation (as the Case may be), and the Debtor shall be bound to answer all pertinent Questions put to him by the Sheriff, or by any Creditor with the Approbation of the Sheriff, under Certification that if, without lawful Cause, he refuse to be put on Oath or Affirmation, or to answer any such Question, or to subscribe his Examination, Decree of Cessio shall be refused in hoc statu; and it shall be competent to the Sheriff to adjourn the Examination for such Time as to him shall appear fit and reasonable.

Sheriff, after  
Examination, to  
decide in Cases  
originating before  
him.

VI. And be it enacted, That the Sheriff shall, on such Examination being taken, allow a Proof to the Parties if it shall appear necessary, and hear Parties vivâ voce, and shall make a Note of any Objections that may be stated on the Part of the Creditors, and either grant Decree or refuse the same in hoc statu, or grant it, subject to a Declaration that it shall not be extractable or available as a Protection to the Debtor, for such Time as shall appear proper, or make such other Orders as may be necessary for the due Administration of Justice; provided that where the Sheriff shall grant Decree under such Limitation, or refuse De-



cree in hoc statu, he shall state the Grounds of his Decision, and the most summary Dispatch consistent with the Forms of Court shall be given, and the Sheriff's Note of the Objections shall form Part of the Process.

*Review in Court of Session.*

VII. And be it enacted, That if such Decree be pronounced by the Sheriff Substitute, it shall be competent to any Person aggrieved to present a reclaiming Petition against the same, provided that the Petition be lodged within Six Days from the Date of the Judgment, and the Sheriff Substitute shall do therewith as shall be just; and in case the Complainer shall intimate his Desire in the Petition that if the Sheriff Substitute be disposed to refuse the Petition it may be laid before the Sheriff, it shall be transmitted to the Sheriff, who shall do therein as shall be just.

*Reclaiming Petition.*

VIII. And be it enacted, That it shall be lawful, either after such reclaiming Petition has been disposed of or without presenting such Petition, for any Person aggrieved to bring the Judgments under the Review of the Court of Session by lodging with any One of the Clerks of that Division of the Court under whose Review he wishes to bring the Cause a reclaiming Note, having such Division marked thereon, reciting the Judgment or Judgments complained of: Provided always, that the said Note shall be lodged within Ten Days from the Date of the Judgment or the last of the Judgments complained of, unless the Judgment be pronounced by the Sheriff of *Orkney*, in which Case the reclaiming Note shall be lodged within Twenty Days from the Date of the Judgment or the last of the Judgments as aforesaid; and a Copy of the said Note shall in all Cases be delivered within the said respective Periods to the Respondent or his known Agent, which shall be held to be due Service, and a Copy thereof, certified by the said Clerk of Session, shall be a sufficient Warrant to the Sheriff Clerk to transmit to the said Clerk the Proceedings in the Process.

*Review of Sheriff's Judgments by Court of Session.*

*Infra, § 15.*

*A. of S. 24 Dec. 1888, § 18, 14.*

IX. And be it enacted, That if the Court of Session be sitting the reclaiming Note shall be enrolled as soon as conveniently can be, and the Court shall pronounce Judgment, or remit the Cause to the Sheriff with such Instructions as to them shall seem fit, or to the Lord Ordinary on the Bills during Vacation or during the Christmas Recess.

*Reclaiming Note to be enrolled, and Court to pronounce Judgment, etc. A. of S. 24 Dec. 1888, § 6-8.*

X. And be it enacted, That if the Court of Session be not sitting when the reclaiming Note has been lodged, the

*Lord Ordinary on Bills may judge during Vacation or Christmas Recess, subject to Review.*

VIII. Martin, 22 Dec. 1887, 16 S. 298.—Summers, 29 Jan. 1889, 1 D. 488.—Fairman, 5 Dec. 1840, 3 D. 192.

X. Forsyth, 16 May 1837, 15 S. 927.—Wilson, 17 Nov. 1888, 1 D. 86.—Galloway, 28 Jan. 1845, 7 D. 855.

*Court of Session  
Causes.*

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*Supra*, § 9.

*Infra*, § 14.

Proceedings in  
Cases originating  
in the Court of  
Session.

*Form of Summons,*  
*A. of S. 24 Dec.*  
*1838, Schedule.*

*Id.*, § 2.

*Id.*, § 3.

Court of Session  
may remit to the  
Sheriff, who shall  
take Proceedings  
thereupon, and  
report.

*A. of S. 24 Dec.*  
*1838, § 4, 5.*

Cause shall, as soon as thereafter may be convenient, be transmitted to the Bill Chamber Clerk, and enrolled in a Roll to be kept for that Purpose in the Bill Chamber; and the Lord Ordinary on the Bills shall, on a Day to be specified in that Roll, hear Parties *vivâ voce*, and pronounce Judgment as hereinbefore provided; and for the Purposes of this Act he shall possess during the Vacation and the Christmas Recess the Powers competent to the Inner House during Session, but his Judgment shall be subject to Review in Manner hereinafter mentioned; and if the Proceedings have not been brought to a Termination before the Lord Ordinary on the Bills at the Commencement of the ensuing Session, the Cause shall be re-transmitted and enrolled before the Inner House, which may give Judgment therein as if it had been enrolled or had continued without Interruption before the Inner House.

XI. And be it enacted, That where a Summons of Cessio bonorum is raised before the Court of Session the Debtor shall publish a Notice in the *Edinburgh Gazette*, intimating that the said Summons has been raised, specifying in which Division of the Court it is to be enrolled, and requiring all his Creditors to appear within Thirty Days from the Date of the said Gazette Notice; and he shall also send Letters through the Post Office (paying the Postage thereof) to each of the Creditors specified in the Summons to the same Effect, or, in his Option, cite them in terms of Law; and on or before the Sixth lawful Day prior to the Expiration of the said Thirty Days he shall lodge, to be patent to all concerned, a State of his Affairs subscribed by himself, and all his Books, Papers, and Documents relating to his Affairs, in the Hands of the Clerk to the Process, together with a Copy of the said Gazette; and if the Letters have been sent through the Post Office he shall produce a Certificate subscribed by his Agent, or by a Messenger or Sheriff Officer and a Witness, stating the Date and the Place where the Letters were put into the Post Office, that the Postage was paid, and that they were severally addressed as specified in the Summons, or an Execution subscribed by a Messenger and One Witness of Citation of the Creditors to whom such Letters have not been so sent.

XII. And be it enacted, That on Expiration of the said Thirty Days the Process shall forthwith be enrolled in the Rolls of the Division of the Inner House, specified in the said Notice, without the Necessity of being called or enrolled in the Outer House; and it shall be competent to

XI. Renny, 11 March 1837, 15 S. 852.

XII. Hackston, 24 Jan. 1837, 15 S. 411.—Tait, 8 March 1839, 1 D. 698.

the Inner House to remit to the Sheriff of the County in which the Debtor's Domicile is, to take his Examination in Presence of his Creditors, and for that Purpose on a Day appointed the Debtor shall appear in Presence of the Sheriff, who shall have Power to put him on Oath or Affirmation (as the Case may be), and the Debtor shall be bound to answer all pertinent Questions put to him, under Certification that if, without lawful Cause, he refuse to be put on Oath or Affirmation, or to answer any such Question, or to subscribe his Examination, Decree of Cessio shall be refused in hoc statu; and the Sheriff shall thereupon report to the said Inner House, who may either grant Decree or refuse the same in hoc statu, or grant it subject to a Declaration that it shall not be extractable or available as a Protection to the Debtor for such Time as shall appear proper, or issue such other Orders as may be necessary for the due Administration of Justice.

XIII. And be it enacted, That if the Court of Session be not sitting at the Time when the said Report has been made by the Sheriff, the Cause may be enrolled in a Roll to be kept for that Purpose in the Bill Chamber, and the Lord Ordinary on the Bills shall, on a Day to be specified in that Roll, hear Parties vivâ voce and pronounce Judgment; and if the Court of Session be sitting when the Report of the said Examination is made, but the Proceedings cannot be brought to a Termination before the Expiration of the Session, or before the Commencement of the Christmas Recess, the Inner House may remit the Cause to the said Lord Ordinary to proceed therein during Vacation or the Christmas Recess, in the same Way as if the Cause had been enrolled in the Bill Chamber in Manner above provided; and if the Proceedings have in any Case not been brought to a Termination before the Lord Ordinary on the Bills at the Commencement of the ensuing Session, the Cause shall be enrolled before the Inner House, which may give Judgment therein as if it had been enrolled, or had continued without Interruption before the Inner House; and for the Purposes of this Act the Lord Ordinary on the Bills shall possess, during the Vacation and the Christmas Recess, the Powers competent to the Inner House during Session; but his Judgment shall be subject to Review in Manner hereinafter mentioned.

XIV. And be it enacted, That it shall be competent for any Person aggrieved by any Judgment pronounced by the Lord Ordinary on the Bills to bring the same under the Review of the Inner House by a reclaiming Note, provided the Note be lodged within Ten Days after the Date of the Judgment, and duly intimated to the Agent of the Re-

*Bill Chamber.*

Lord Ordinary on the Bills may judge on the Report during Vacation or Christmas Recess.

*Supra*, § 10.

*Infra*, § 14.

Judgment of the Lord Ordinary on the Bills subject to Review.

*Supra*, § 10, 13.

*Liberation. Effect  
of Decree.*

Power to grant  
interim Protection  
or Liberation.  
*A. of S. 24 Dec.  
1836, § 10.*

*Supra*, § 7, 8.

Decree to operate  
as an Assignment  
to Creditors, or  
Disposition om-  
nium bonorum to  
be granted.

spondent, and the Inner House shall proceed with all Dis-  
patch to hear Parties *viva voce* thereon, and may give  
Judgment as aforesaid, or issue such other Orders as may  
be necessary for the Purposes of Justice.

XV. And be it enacted, That if the Debtor be in Prison  
it shall be competent for the Inner House during Session,  
and for the Lord Ordinary on the Bills during the Vaca-  
tion or the Christmas Recess, whether the Case has been  
originally instituted in the Court of Session or before the  
Sheriff (provided that it be under Review of the said  
Court), and for the Sheriff, where the Petition has been  
presented to and is depending before him, on Production of  
a Copy of the said Gazette containing the Notice aforesaid,  
and of the Certificate of Transmission of the Letters or  
Execution of Citation, to grant Warrant to liberate the  
Debtor, and if the Debtor is not in Prison to grant War-  
rant for his personal Protection against the Execution of  
Diligence for such Space of Time as shall be proper; pro-  
vided that before any such Warrant be issued the Debtor  
shall lodge with the Clerk of Court a Bond with a sufficient  
Cautioner, binding themselves that he shall attend all Diets  
of Court whenever required under such Penalty as may be  
reasonable, and which, if forfeited, shall be divided among  
the Creditors; and it shall be competent for the Inner  
House, or the said Lord Ordinary, or the Sheriff respec-  
tively, in all Cases to grant Warrant to bring the Debtor  
before them for Examination, and also to carry him back to  
Prison; and such Warrant, as well as the Warrant of  
Liberation and the Warrant of personal Protection, shall  
be good and lawful Warrants in all Parts of *Scotland* to  
the effect therein specified; and it shall not be competent,  
where the Warrant of Liberation or Protection is granted  
by the Lord Ordinary on the Bills or the Sheriff, to sus-  
pend the Effect thereof by lodging a reclaiming Note or  
Petition complaining of the same: Provided nevertheless,  
that a reclaiming Note or Petition may be lodged as here-  
inbefore provided, and it shall be competent to the Inner  
House or the Sheriff (as the Case may be), on hearing  
Parties, to recall the Warrant of Liberation and Protection.

XVI. And be it enacted, That the Decree pronounced  
by the Inner House, or by the Lord Ordinary on the Bills,  
or by the Sheriff, granting the Benefit of *Cessio bonorum*,  
shall operate as an Assignment of the Debtor's Moveables  
in favour of any Trustee mentioned in the Decree for Be-  
hoof of the Creditors: Provided always, that it shall be

XV. *Sawers*, 15 Nov. 1836, 15 S. 4.—*Hamilton*, 3 Dec. 1836, 15 S. 190, 574.  
—*Taylor*, 7 March 1837, 15 S. 753, 1157.—*Martin*, 22 Dec. 1837, 16 S. 298.  
XVI. *Macgregor*, 14 Dec. 1852, 15 D. 225.—*Soutar*, 25 Nov. 1852, 15 D. 88.

*Miscellaneous.*

optional to the Creditors to require the Debtor to execute a Disposition omnium bonorum, as has been hitherto granted in Processes of Cessio before the Court of Session, in favour of the Trustee, the Expense of which Deed shall be paid out of the readiest of the Funds thereby conveyed.

XVII. And be it enacted, That if the Decree of Cessio be refused in hoc statu either by the Court of Session or the Sheriff, the Debtor may at any Time thereafter, without the Necessity of raising any new Summons or presenting any new Petition, apply to have Decree of Cessio pronounced in his Favour; and if the Decree has, on Review by the Court of Session, been refused in hoc statu, the Debtor may either apply to that Court for Decree, or present a new Petition to the Sheriff, in which latter Case Proceedings shall take place as if no former Petition had been presented, and the Debtor shall in all Cases of a renewed Application give Notice thereof in such Manner as shall be appointed either by the Court of Session or Sheriff respectively.

XVIII. And be it enacted, That it shall not be lawful to ordain the Debtor to wear the Dyvours Habit; and he shall be required to prove his Insolvency (if the same shall be denied) as by Law presently established; and he shall be bound to make Oath or Affirmation, in Cases before the Sheriff as well as in those before the Court of Session, in the same Terms as the Oath hitherto administered in Processes of Cessio in the Court of Session; and an Act of the Parliament of Scotland, passed in the Year Sixteen hundred and ninety-six, intituled, *An Act for declaring notour Bankrupts*, shall be and is hereby repealed in so far as the said Act bears that "the Lords of Session are hereby discharged to dispense any Bankrupt as to the Habit, unless in the Summons and Process of Cessio the Bankrupt's failing through Misfortune be libelled, sustained, and proven."

XIX. And be it enacted, That nothing herein contained shall exclude an Appeal to the House of Lords against the Judgment of the said Inner House, either granting or refusing Decree of Cessio: Provided always, that the Petition of Appeal be lodged within Ten Days from the Date of the Judgment during the Sitting of Parliament, if it shall continue to sit for so many Days, and if Parliament be not sitting, or, if sitting, there be not so many Days, then the Petition of Appeal shall be presented within Six Days after the next Session of Parliament shall have met.

XX. And be it enacted, That no Fee Fund Dues shall be exigible in respect of any of the Proceedings mentioned in this Act, nor shall any Stamp Duty or other Government Duty be exigible in respect of any Notices or Adver-

Provision where Decree refused in hoc statu.

*A. of S.* 24 Dec. 1838, § 12.

Dyvours Habit abolished.

Oath to be taken, and Insolvency proved if denied.

*A. of S.* 24 Dec. 1838, § 11.

Act of 1696, c. 5, in part repealed.

Regulation of Appeals to the House of Lords.

No Fee Fund Dues or Government Duties exigible.

*Practitioners, etc.*

Court of Session  
Agents may practise in Sheriff  
Courts.

See 1 W. 4, c. 69,  
§ 39; 6 & 7 W. 4,  
c. 41, § 3.

Act may be re-  
pealed this Ses-  
sion.

tisements authorized by this Act to be inserted in the *Edinburgh Gazette*, nor in respect of any Disposition which the Debtor shall be ordained to execute in Terms of this Act; any Law or Statute to the contrary notwithstanding.

XXI. And be it enacted, That it shall be lawful for all Agents duly qualified to practise before the Court of Session to practise as Agents in all Sheriff Courts in so far as relates to any of the Proceedings which are authorized by this Act to be carried on before the Sheriff; provided that they shall not be entitled to Payment of any other or higher Fees than those legally exigible by other Agents before such Courts.

XXII. And be it enacted, That this Act may be repealed, altered, or amended by any Act or Acts passed during the present Session of Parliament.

## 7° GULIELMI IV. REGIS.

### CAP. XIV.

*An Act to explain and amend Two Acts relating to Trial by Jury in Scotland.*—[8th June 1837.]

55 G. 3, c. 42, § 7.

WHEREAS by an Act passed in the Fifty-fifth Year of the Reign of his Majesty King *George the Third*, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes*, it is enacted, that it shall be competent to the Counsel for any Party at the Trial of any Issue or Issues to except to the Opinion and Direction of the Judge or Judges before whom the same shall be tried, either as to the Competency of Witnesses, the Admissibility of Evidence, or other Matter of Law arising at the Trial, and that on such Exception being taken the same shall be put in Writing by the Counsel for the Party objecting, and signed by the Judge or Judges, but notwithstanding the said Exception the Trial shall proceed, and the Jury shall give a Verdict therein for the Pursuer or Defender, and assess Damages when necessary; and after the Trial of every such Issue or Issues the Judge who presided shall forthwith present the said Exception, with the Order or Interlocutor directing such Issue or Issues, and a Copy of the Verdict of the Jury indorsed thereon, to the Division by which the said Issue or Issues were directed, which Division shall thereupon order the said Exception to be heard in Presence on or before the Fourth Sederunt Day thereafter; and in case the said Division shall allow

Bills of Exceptions.

the said Exception, they shall direct another Jury to be summoned for the Trial of the said Issue or Issues; or if the Exception shall be disallowed, the Verdict shall be final and conclusive as hereinafter mentioned; provided always, that it shall be competent to the Party against whom any Interlocutor shall be pronounced on the Matter of the Exception to appeal from such Interlocutor to the House of Lords, attaching a Copy of the Exception to the Petition of Appeal, certified by One of the Clerks of Session, so as such Appeal shall be presented to the House of Lords within Fourteen Days after the Interlocutor shall have been pronounced, if Parliament shall be then sitting, or if Parliament shall not be sitting, then within Eight Days after the Commencement of the next Session of Parliament, but not afterwards, and so as the Proceedings on such Appeal do conform in all respects to the Rules and Regulations established respecting Appeals; and every such Appeal shall be appointed to be heard on or before the Fourth Cause Day after the Time limited for laying the printed Cases in such Appeal upon the Table of the House of Lords; and upon the Hearing of such Appeal the House of Lords shall give such Judgment regarding the further Proceedings, either by directing a new Trial to be had, or otherwise, as the Case may require: And whereas by an Act passed in the Fifty-ninth Year of the Reign of his said Majesty King George the Third, intituled, *An Act to amend an Act passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, "An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland by extending Trial by Jury to Civil Causes,"* it is enacted, that if the Motion for setting aside the Verdict be founded on the Misdirection of the Judge at the Trial in Matter of Law, or on the undue Admission or Rejection of Evidence, it shall be competent to the Party against whom Judgment is given by the Jury Court to tender a Bill of Exceptions to such Judgment in the same Manner as at a Trial, and the Proceedings on such Bills of Exceptions shall be conformable in all respects to the Provisions of the Act of the Fifty-fifth Year of the Reign of his present Majesty hereinbefore recited regarding Bills of Exceptions: And whereas Doubts have arisen whether, according to the Enactments hereinbefore recited, the Court of Appeal is not authorized in Cases coming before it upon Bills of Exceptions to order another or new Trial, although such Court of Appeal should be of Opinion that the Exception is not to be allowed; and it is expedient that such Doubts should be removed: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the

59 G. 3, c. 35, § 17.

*Bills of Exceptions.*

On Bills of Exceptions, the Court of Session or House of Lords not authorized to order a new Trial unless they are of Opinion that Exceptions should be allowed.

See 18 & 14 V., c. 86, § 45.

Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, and it is hereby enacted, That henceforth in all Cases in which any Bill of Exceptions is brought before the Court of Session, or carried by Appeal to the House of Lords, it shall not be competent to the Court of Session or to the House of Lords in pronouncing Judgment on such Bill of Exceptions to make any Order or to pronounce any Judgment ordering a new Trial, unless the said Court or House of Lords shall be of Opinion that the Exception is to be allowed; and that in all Cases of Bills of Exceptions in which it shall be the Opinion of the said Court or House of Lords that the Law directed at the Trial, or the Determination to receive or reject Evidence and excepted to, is correct, the said Court or House of Lords shall make an Order that the Bill of Exceptions shall be disallowed, and that the Verdict found by the Jury shall be carried into Effect by a Judgment pronounced thereon for the Party in whose Favour the said Verdict was found; anything in the said recited Acts, or in any other Act of Parliament, to the contrary notwithstanding.

1<sup>o</sup> VICTORIÆ REGINÆ.

## CAP. XLI.

[*Sheriffs Small Debt Act, 1837.*  
Ext. by 16 & 17 V., c. 80, § 28, 26.]

*An Act for the more effectual Recovery of Small Debts in the Sheriff Courts, and for regulating the Establishment of Circuit Courts for the Trial of Small Debt Causes by the Sheriffs in Scotland.*—[12th July 1837.]

Decree not subject to Review, except as hereby provided.

§ XXX. And be it enacted, That no Decree given by any Sheriff in any Cause or Prosecution decided under the Authority of this Act shall be subject to Reduction, Advocacion, Suspension, or Appeal, or any other Form of Review or Stay of Execution, other than provided by this Act, either on account of any Omission or Irregularity or Informality in the Citation or Proceedings, or on the Merits, or on any Ground or Reason whatever.

Form of Review provided.

20 G. 2, c. 43, § 84-86.

[By § 86, such Cases may be certified to either Division of the Court of Session.]

§ XXXI. And be it enacted, That it shall be competent to any Person conceiving himself aggrieved by any Decree given by any Sheriff in any Cause or Prosecution raised under the Authority of this Act to bring the Case by Appeal before the next Circuit Court of Justiciary, or, where there are no Circuit Courts, before the High Court of Justiciary at *Edinburgh*, in the Manner, and by and under the Rules, Limitations, Conditions, and Restrictions contained in the before recited Act passed in the Twentieth Year of the Reign of his Majesty King

XXX. and XXXI. Rankine, 7 Dec. 1843, 6 D. 183.—Miller, 2 Feb. 1850, 12 D. 666.



George the Second, for taking away and abolishing the heritable Jurisdctions in *Scotland*, except in so far as altered by this Act: Provided always, that such Appeal shall be competent only when founded on the Ground of Corruption or Malice and Oppression on the Part of the Sheriff, or on such Deviations in point of Form from the statutory Enactments as the Court shall think took place wilfully, or have prevented substantial Justice from having been done, or on Incompetency, including Defect of Jurisdiction of the Sheriff; provided also, that such Appeals shall be heard and determined in open Court, and that it shall be competent to the Court to correct such Deviation in point of Form, or to remit the Cause to the Sheriff with Instructions or for re-hearing generally, and it shall not be competent to produce or found upon any Document as Evidence on the Merits of the original Cause which was not produced to the Sheriff when the Case is heard, and to which his Signature or Initials have not been then affixed, which he is only to do if required, nor to found upon nor refer to the Testimony of any Witness not examined before the Sheriff, and whose Name is not written by him when the Case is heard upon the Record Copy of the Summons, which he is to do when specially required to that Effect: Provided further, that no Sist or Stay of the Process and Decree and no Certificate of Appeal shall be issued by the Sheriff Clerk, except upon Consignation of the whole Sum, if any, decerned for by the Decree and Expenses, if any, and Security found for the whole Expenses which may be incurred and found due under the Appeal.

§ XXXV. And be it enacted, That no Person whatsoever shall be exempt from the Jurisdiction of the Sheriff in any Cause or Prosecution raised under the Authority of this Act on account of Privilege, as being a Member of the College of Justice, or otherwise.

*Small Debt Decrees.*

[By § 87, the word "Sheriff" is to include Sheriff and Steward Depute, Sheriff and Steward Substitute.]

Privileged Persons not exempt.

*Ext. by 18 & 14 V., c. 86, § 17; 16 & 17 V., c. 80, § 48.*

1° & 2° VICTORIÆ REGINÆ.

CAP. LXXXVI.

*An Act to diminish Delay and Expense in Advocations and Suspensions in the Court of Session in Scotland.*—[10th August 1838.]

**W**HEREAS it is expedient that it should be made competent to bring Advocations and Suspensions into the Court of Session in *Scotland*, without the Necessity of presenting Bills of Advocation or Suspension in the Bill Chamber in the present Form, and expediting Letters of Advocation or Suspension under the Signet, and thereby to diminish the Delay and Expense arising from the present Mode of Procedure: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the final Judgments of Sheriffs or other inferior Judges of which Advocation is at present competent may

[Advocation and Suspension Act, 1838. Amends 50 G. 3, c. 112, § 86-48; 6 G. 4, c. 120, § 40-48; A. of S. 11 July 1828, § 1-21.

As to Procedure, see 13 & 14 V., c. 86, § 9, 32, 33, 34; 16 & 17 V., c. 80, § 25; A. of S. 24 Dec. 1838, and Schedules.]

Final Judgments may be brought under Review by

*Advocation, Merits, and Interlocutory.*

Note of Advocation.

*Am.* 50 G. 3, c. 112, § 88.

*Am.* 6 G. 4, c. 120, § 41, 43.

*A. of S.* 24 Dec. 1838, § 11.

Cases of Competition of Brieves and Services may be removed to Court of Session.

*Am.* 1 & 2 G. 4, c. 88, § 11, 12.

*Am.* by 10 & 11 V., c. 47.

Advocation of interlocutory Judgments may be brought.

50 G. 3, c. 112, § 86.

be brought under Review of the Court of Session, before Extract, by lodging with One of the Depute Clerks of Session or his Assistant a written Note of Advocation, signed by an Agent in the said Court, having prefixed thereto the Interlocutor or Interlocutors complained of, together with the Notes of the Judge, if any, affixed thereto, and setting forth in a Prayer the Relief or Remedy craved; and such Note shall be received and marked by such Depute or Assistant Clerk on such Caution as is by the present Practice required, being certified by the Clerk of the inferior Court to have been found in common Form; and certified Notice, under the Hand of the said Depute or Assistant Clerk, of such Note of Advocation having been received being transmitted to the Clerk of such inferior Court, all further Proceedings in the original Cause shall cease, and the Process shall forthwith be transmitted to the Court of Session; and such Note of Advocation and Notice shall be intimated to the opposite Party by delivering a Copy of the same to him or his known Agent, and a Certificate of Intimation shall be indorsed on the said Note by the Agent of the Advocate; and within Fifteen Days after the Date of such Intimation, it shall be competent to call and thereafter to enrol the Cause in the weekly printed Roll, and the same shall proceed in like Manner as at present on expedite Letters of Advocation.

II. And be it enacted, That in Cases of Competitions of Brieves, as well as where a Party claiming Right to appear and oppose a Service has made Appearance, it shall be lawful to any Party to remove the Cause or Proceedings to the Court of Session, by written Note of Advocation as aforesaid, not only from any inferior Judge, but also from the Sheriff of *Edinburgh* acting under special Commission by Authority of the Court of Session; and such Note shall be received and marked in Manner and to the Effect aforesaid, and be laid before a Lord Ordinary named in the Note, who shall advocate the Brief and be the Judge in the said Service, without Prejudice nevertheless to the Power of the Court, on Declinature or other Cause shown, to remit to any other Ordinary to be Judge in any Service; and thereafter the Cause shall proceed in the Form in such Cases made and provided.

III. And be it enacted, That such Advocations of interlocutory Judgments of Sheriffs and other inferior Judges as are allowed by an Act passed in the Fiftieth Year of the Reign of his Majesty King *George* the Third, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, for the Regulation of certain*

II. Tennant, 16 Dec. 1841, 4 D. 269.

III. Dalnellington Iron Co. 20 March 1856, 18 D. 851.

*Parts of the Proceedings of that Court*, may be brought by lodging in the Bill Chamber a written Note of Advocation in Manner aforesaid; and there shall be annexed to such Note an articulate Statement of the Reasons of Advocation, together with a Note of Pleas in Law; and on such Caution as is by the present Practice required being certified as aforesaid to have been found in the inferior Court in common Form, such Note of Advocation shall be received and marked by the Clerk in the Bill Chamber, and be forthwith laid before the Lord Ordinary on the Bills, who shall pronounce such Order or Interlocutor thereon as shall be just; and where Answers shall be ordered, such Answers shall be in a similar Form to the Reasons of Advocation; and in case the Lord Ordinary shall pass such Note of Advocation, the Cause may, after the Expiry of Fifteen Days from the passing of the Note, be called, and thereafter enrolled in the weekly printed Roll, in like Manner as at present on expedite Letters of Advocation; and if Parties shall not be prepared to close the Record upon the Note and Reasons of Advocation, it shall be competent to order them to be revised, with a view to their forming the Record, or to order a Condescendence and Answers, as in the Case of ordinary Actions, and the Cause shall thereafter proceed before the Lord Ordinary and the Court of Session in common Form.

IV. And be it enacted, That where the Judgment of any inferior Court pronounced in foro, which may at present be brought under Review of the Court of Session by Suspension, with the Exception of any Judgment pronounced in Actions of Removing, is intended to be brought under Review in that Form, it shall be competent to suspend the Decree, and any Diligence or Proceedings following thereon, by lodging in the Bill Chamber a written Note of Suspension, signed by an Agent in the Court of Session, reciting the Import and Effect of the Decree sought to be suspended, and setting forth in a Prayer the Relief or Remedy craved; the Presentment of which Note, on being certified by the Clerk, shall operate as an interim Sist of Diligence; and on such Caution as is by the present Practice required being found for Implement of such Decree, and also for such Expenses as may be incurred in the Court of Session, such Note shall be forthwith passed by the Lord Ordinary on the Bills, and certified Notice of the Note having been passed being transmitted to the Clerk of the inferior Court the Process shall be forthwith transmitted to the Court of Session; and such Note and Interlocutor passing, the same shall be served on the opposite Party by a Messenger at Arms

*Suspension.*

*Am.* 6 G. 4, c. 120, § 43, 45.

*A. of S.* 24 Dec. 1838, § 1, 2.

*A. of S.* 24 Dec. 1838, § 11.

*A of S* 5<sup>th</sup> July.  
1861 51576

*Id.*, § 12, 13.

Suspensions may be brought of Decrees in foro.

*Am.* 50 G. 3, c. 112, § 36-8; 6 G. 4, c. 120, § 46, 47.

*Infra*, § 5.

*A. of S.* 24 Dec. 1838, § 3, 5, 6; 11 July 1828, § 118.

*As to Caution, see A. of S.* 28 Nov. 1717; 29 Jan. 1650; 16 Jan. 1650; 23 Nov. 1618.

*Decrees in Absence.*

in common Form; and it shall be competent after the Expiry of Fifteen Days from the Date of Service to call and thereafter to enrol the Cause in the weekly printed Roll, and to proceed therein in like Manner as at present on expedite Letters of Suspension: Provided always, that where a Party is desirous to have such Decree of any inferior Court pronounced in foro suspended without Caution or on juratory Caution, and also in Suspensions of Decrets of Removing, there shall be annexed to such Note of Suspension an articulated Statement of the Facts on which the Suspension is founded and a Note of Pleas in Law; and such Note shall be laid before the Lord Ordinary on the Bills, who may pronounce such Order or Interlocutor as shall be just; and where Answers shall be ordered, such Answers shall be in a similar Form to the Reasons of Suspension; and in case the Lord Ordinary shall pass the Note, the same Procedure shall take place as is hereinbefore provided in the Case of Advocations of interlocutory Judgments, it being always competent to reclaim to the Inner House against the Interlocutor of the Lord Ordinary passing or refusing such Note; and provided also, that in all Cases of Suspension it shall be competent to the inferior Court or the Court of Session to regulate all Matters regarding interim Possession in like Manner as is by the present Law and Practice competent in the Case of Advocations.

*Removings.*

*Am.* 50 G. 3, c. 112, § 42.

*Ext.* 6 G. 4, c. 120, § 44.

*Supra*, § 3.*Interim Possession.*  
*Sec* 6 G. 4, c. 120, § 42.

Suspensions of Decrees in Absence may be brought.

*As to Decrees in foro, see Act of Reg.* 1695, § 18 (*Al. Abr. App.*, p. 188); *A. of S.* 27 July 1599.

V. And be it enacted, That it shall be lawful for any Party to bring a Suspension of any Decree in Absence pronounced in the Court of Session, by lodging in the Bill Chamber a Note of Suspension of the Form and Effect of Notes of Suspension hereinbefore allowed to be brought of Decrees in foro of inferior Courts; and upon Consignation in the Hands of the Clerk of such Expenses as may have been decerned for, such Note of Suspension shall be received and marked by the Clerk in the Bill Chamber, and shall thereupon be laid before the Lord Ordinary on the Bills, and shall be passed; and the Lord Ordinary shall have Power to award to the Pursuer such Part of the Expenses consigned as may appear to be just; and such Note of Suspension and Interlocutor passing, the same shall be served on the opposite Party by a Messenger at Arms in common Form, and it shall be competent after the Elapse of Fifteen Days from the Date of Service to call and thereafter to enrol the Cause before the Judge who pronounced the original Decree or his Successor, and to proceed therein in common Form, without Prejudice to the Power of the Court, on Cause shown, to remit the same to any other Lord Ordinary;

V. Downie, 27 Nov. 1841, 4 D. 117.—M'Phan, 20 Jan. 1842, 4 D. 418.—Edin. Perth and Dundee Ry. Co. 18 July 1862, 14 D. 1901.

and the Lord Ordinary before whom such Cause shall come may grant Warrant to transmit the original Proceedings to the Clerk to such Cause.

VI. And be it enacted, That all Suspensions and Interdicts, and Advocations and Suspensions, not otherwise provided for in this Act, may be brought by lodging in the Bill Chamber a Note in Manner aforesaid, and there shall be annexed to such Note an articulate Statement of the Facts on which such Advocation or Suspension is founded, together with a Note of Pleas in Law, and such Note of Advocation or Suspension shall be received and marked by the Clerk in the Bill Chamber, and be forthwith laid before the Lord Ordinary on the Bills, who shall pronounce such Order or Interlocutor thereon as may be just; and such Note and Order or Interlocutor thereon shall be served on the opposite Party by a Messenger at Arms in common Form, and shall be answered in a similar Form to the Reasons of Advocation or Suspension; and in case the Lord Ordinary shall pass the said Note, the same Procedure shall take place as is hereinbefore provided in the Case of Advocations of interlocutory Judgments: Provided always, that the Practice as to Caution in such Cases, and Power to reclaim to the Inner House, shall remain as at present.

VII. And be it enacted, That it shall be lawful for any Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act to make Application to the Lord High Treasurer or to the Commissioners of her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the Time being, claiming such Compensation, giving at the same Time Notice of such Application to her Majesty's Advocate; and it shall be lawful for the said Lord High Treasurer or Commissioners of the Treasury to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer or Commissioners of her Majesty's Treasury, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be

*Suspensions and Interdicts.*

Form of Suspensions and Interdicts, etc., not otherwise provided for in this Act.

*Am.* 50 G. 3, c. 112, § 41, 42.

*See* 6 G. 4, c. 120, § 40-48.

*A. of S.* 20 Nov.

1711; 11 July 1828, § 25.

*As to Second Suspension, see A. of S.* 11 July 1828, § 15; 24 Dec. 1888, § 5, 7.

Authorizing Compensation to Persons affected by this Act.

*Compensation.  
Repeal.*

so awarded by way of Annuity shall be afterwards appointed to any other public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

Compensation,  
how to be paid.

VIII. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Court of Session  
authorized to  
make Acts of  
Sederunt relative  
to this Act.

IX. And be it enacted, That the Court of Session shall be and is hereby empowered from Time to Time to make such further Regulations, by Act or Acts of Sederunt, as the said Court may deem proper for carrying into effect the Purposes of this Act; and for such Purposes the said Court may meet during Vacation as well as during Session, and may alter and amend such Regulations from Time to Time: Provided always, that within Fourteen Days from the Commencement of the Session of Parliament next ensuing the making of any such Regulations, there shall be transmitted to both Houses of Parliament Copies of all such Acts of Sederunt to be made and passed under the Powers hereby given.

Acts inconsistent  
with this Act  
repealed.

X. And be it enacted, That all Laws, Statutes, and Usages relative to the Subject Matter of this Act shall be and the same are hereby repealed, in as far as they may be in any respect inconsistent or at variance with the Provisions of this Act: Provided always, that the same shall in all other respects be of full Force and Effect.

Commencement  
of Act.

XI. And be it enacted, That the Provisions of this Act shall commence and take effect from and after the Thirty-first Day of *December* One thousand eight hundred and thirty-eight.

Act may be altered  
or repealed.

XII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

*Extract and  
Warrant.*

## 1° &amp; 2° VICTORIÆ REGINÆ.

## CAP. CXIV.

*An Act to amend the Law of Scotland in Matters relating to Personal Diligence, Arrestments, and Poidings.*—[16th August 1838.]

[Personal Diligence Act, 1838. This and the following Act are printed entire; though to economise space, the smaller type has been used.]

**W**HEREAS it is expedient to improve the Form and to diminish the Expense of the Diligence of the Law in Scotland against the Persons of Debtors, and to amend the Law as to the Diligence of Arrestment and Poiding: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Thirty-first Day of December One thousand eight hundred and thirty-eight, where an Extract shall be issued of a Decree or Act pronounced or to be pronounced by the Court of Session, or by the Court of Commission for Teinds, or by the Court of Justiciary, or of a Decree proceeding upon any Deed, Decree Arbitral, Bond, Protest of a Bill, Promissory Note, or Banker's Note, or upon any other Obligation or Document on which Execution may competently proceed, recorded in the Books of Council and Session or of the Court of Justiciary, the Extractor shall, in Terms of the Schedule (Number 1) hereunto annexed (or as near to the Form thereof as Circumstances will permit), insert a Warrant to charge the Debtor or Obligor to pay the Debt or perform the Obligation within the Days of Charge, under the Pain of Poiding and Imprisonment, and to arrest and poind, and for that Purpose to open shut and lockfast Places; which Extract shall be subscribed and prepared in other Respects as Extracts are at present subscribed and prepared, and for which Extract no higher Fees shall be exigible than those which are payable as by Law established.

II. And be it enacted, That it shall be lawful by virtue of such Extract to arrest in like Manner as if Letters of Arrestment on liquid Grounds of Debt or Letters of Horning containing Warrant to arrest had been issued under the Signet.

III. And be it enacted, That it shall be lawful by virtue of such Extract to charge the Debtor or Obligor therein mentioned to pay the Sums of Money or to perform the Obligation therein specified within the Days of Charge, from and after the Date of Charge, under the Pain of Poiding and Imprisonment; and the Officer executing the same shall return an Execution in Terms of the Schedule (Number 2) hereunto annexed, or as near to the Form thereof as Circumstances will permit.

IV. And be it enacted, That on the Expiration of the Days of Charge it shall be lawful by virtue of such Extract to poind the moveable Effects of the Debtor in Payment of the Sums of Money therein mentioned, as if Letters of Poiding or Letters of Horning containing Warrant to poind had been issued, and for that Purpose to open shut and lockfast Places.

V. And be it enacted, That it shall be competent at any Time within Year and Day after a Charge has expired to present such Extract and Execution of Charge to the Keeper of the General Register of Hornings at *Edinburgh*, and the Keeper shall thereupon record the Execution in that Register, and state therein the Name and Designa-

Extracts of Court of Session, Teind Court, and Court of Justiciary Decrees to contain Warrant to arrest, charge, and poind.

See 50 G. 3, c. 112; 1 & 2 G. 4, c. 38, § 17.

A. of S. 24 Dec. 1838, § 1, 2.

Competent to arrest.

Ext. by 19 & 20 V., c. 60, § 3; 19 & 20 V., c. 91, § 1.

Competent to charge.

Officer's Execution.

Competent to poind.

Ext. by 19 & 20 V., c. 60, § 3, 4.

Execution to be registered;

*Execution of  
Warrant.*

and to have the Effect of Denunciation, and to accumulate Interest.

Extract and Execution with Certificate of Registration to be presented in the Bill Chamber for Warrant to imprison.

Execution at the Instance of a Person acquiring Right to Extract.

Letters of Horning may be issued as formerly, but no Expenses exigible. *Infra*, § 85.

Extracts in Terms of this Act may

tion of the Person by whom the Extract and Execution were presented, and also the Date of Presentation; which Registration shall have the same Effect as if the Debtor or Obligant had been denounced Rebel in virtue of Letters of Horning, and the said Letters, with the Executions of Charge and Denunciation, had been recorded according to the Forms now in Use, and shall have the Effect to accumulate the Debt and Interest into a capital Sum, whereon Interest shall thereafter become due.

VI. And be it enacted, That on the Execution being so recorded the Keeper of the Register shall write upon the Extract and upon the Execution (if it be written on Paper apart) a Certificate of the Registration thereof in Terms or to the Effect of the Schedule (Number 3) hereunto annexed, which he shall date and subscribe; and if Warrant to imprison be required, a Writer to the Signet shall endorse and subscribe on the Extract a Minute to the Effect of the Schedule (Number 4) hereunto annexed (or as near to that Form as Circumstances will permit); and the Extract, with the Execution and Certificate of Registration and endorsed Minute, shall be presented in the Bill Chamber of the Court of Session, and the Clerk thereof shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, "Fiat ut petitur," and shall date and subscribe the same; and it shall be lawful by virtue of the said Extract and Deliverance to search for, take, apprehend, and imprison the Debtor or Obligant, and, if necessary for that Purpose, to open shut and lockfast Places; and Magistrates and Keepers of Prisons are hereby authorized and required to receive into and detain in Prison the Person of the Debtor or Obligant till liberated in due Course of Law, in like Manner as if Letters of Caption had been issued under the Signet.

VII. And be it enacted, That where any Person shall acquire Right to an Extract of a Decree or Act issued as aforesaid it shall be competent to him to present in the Bill Chamber the Extract, with the Execution of Charge (if a Charge shall have been given), and Certificate of Registration (if the same shall have been registered), and a Minute endorsed thereon, in the Form of the Schedule (Number 5) hereunto annexed (or as near thereto as Circumstances will permit), subscribed by a Writer to the Signet, with the Assignment, Confirmation, or other legal Evidence of such acquired Right, praying for Authority (as the Case may be) to arrest, charge, poind the Effects of, or (as the Case may be) to imprison, the said Debtor or Obligant, and open shut and lockfast Places; and the Clerk shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, "Fiat ut petitur," and he shall date and subscribe the same, and endorse the same Date on the Documents produced, and subscribe with his Initials the Date so endorsed; and the Extract with such Deliverance shall be a Warrant to arrest, charge, poind, and open shut and lockfast Places, or (as the Case may be) to search for, take, apprehend, and imprison as aforesaid, at the Instance of such Person.

VIII. And be it enacted, That nothing herein contained shall prevent any Person from obtaining Extracts, and also Letters of Horning, Poinding, and Arrestment, or Letters of Arrestment and Letters of Caption, according to the former Law and Practice, if he shall see fit to proceed in that Way, in place of in the Manner hereby provided; but it is hereby declared, that in such Case no Part of the Expenses thereof, except the Expenses of the Extract, shall be exigible from the Debtor or Obligant, or his Estate, unless it be shown that it is incompetent to proceed in the Way herein provided; and where an Extract has been issued before the Commencement of this Act, it shall be com-



potent for the Person in whose Favour such Extract has been issued, or the Person having Right thereto, to obtain an Extract in Terms of this Act, or a Warrant subjoined to the former Extract in Terms of the said Schedule (Number 1), and to prosecute Diligence thereon agreeably to the Provisions hereof.

IX. And be it enacted, That from and after the said Thirty-first Day of December, where an Extract shall be issued of any Decree or Act pronounced or to be pronounced by any Sheriff, or of a Decree proceeding upon any Deed, Decree Arbitral, Bond, Protest of a Bill, Promissory Note, or Banker's Note, or upon any other Obligation or Document on which Execution may competently proceed, recorded in the Sheriff Court Books, the Extractor shall, in Terms of the Schedule (Number 6) hereunto annexed (or as near thereto as Circumstances will permit), insert therein a Warrant to charge the Debtor or Obligent to pay the Debt or perform the Obligation within the Days of Charge, under the Pain of Poining and Imprisonment, and to arrest and poind according to the present Practice, and, if need be for the Purpose of Poining, to open shut and lockfast Places; which Extract shall be subscribed and prepared in other Respects as Extracts are at present subscribed and prepared, and for which Extracts no higher Fees shall be exigible than those which are payable as by Law established; and where an Extract has been issued from the Books of the Sheriff before the Commencement of this Act it shall be competent for the Person in whose Favour such Extract has been issued, or the Person having Right thereto, to obtain an Extract in Terms of this Act, or a Warrant subjoined to the former Extract in Terms of the said Schedule (Number 6), and to prosecute Diligence thereon agreeably to the Provisions hereof.

X. And be it enacted, That it shall be lawful by virtue of such Extract to charge the Debtor or Obligent therein mentioned to pay the Sums of Money or to perform the Obligation therein specified within the Days of Charge, under Pain of Poining and Imprisonment, and the Officer executing the same shall return an Execution in Terms of the said Schedule (Number 2), or as near to the Form thereof as Circumstances will permit; and it shall be competent at any Time within Year and Day after a Charge has expired to present the Extract and Execution of Charge to the Clerk of the Sheriff Court from which the Extract has been issued, who shall thereupon record the Execution in the Register of Hornings kept by him, and state therein the Name and Designation of the Person by whom the Extract and Execution were presented and the Date of Presentation; which Registration shall have the same Effect as if the Debtor or Obligent had been denounced Rebel in virtue of Letters of Horning, and the said Letters with the Executions of Charge and Denunciation had been recorded according to the Forms now in Use, and shall have the Effect to accumulate the Debt and Interest into a capital Sum whereon Interest shall thereafter become due.

XI. And be it enacted, That on the Execution being so recorded the Sheriff Clerk shall write upon the Extract and upon the Execution (if it be written on Paper apart) a Certificate of the Registration thereof, which he shall date and subscribe, in Terms of the Schedule (Number 7) hereunto annexed (or as near thereto as Circumstances will permit); and if Warrant to imprison be desired, the Creditor or a Procurator of Court shall endorse and subscribe on the said Extract a Minute in the Terms of the Schedule (Number 8) hereunto annexed (or as near to that Form as Circumstances will permit); and the said Clerk shall, if there be no lawful Cause to the contrary, write on the

*Execution of  
Sheriff's Decrees.*

be obtained where Extracts issued prior to its Commencement.

Extracts of Sheriff's Decrees, etc., to contain Warrant to arrest, charge, poind, and open shut and lockfast Places.  
*A. of S.* 24 Dec. 1838, § 1, 2.

Execution to be registered, and to accumulate Interest.

Extract and Execution with Certificate of Registration to be presented in Sheriff Court for Warrant to imprison.

Warrant of  
Concurrence.

Execution at the  
Instance of a Per-  
son acquiring  
Right to the  
Extract.

Warrant of Con-  
currence to  
charge, arrest,  
and point.

Warrant by con-  
curring Sheriff  
Clerk to imprison.

Extract this Deliverance, "Fiat ut petitur," and shall date and subscribe the same; and it shall be lawful by virtue of the said Extract and Deliverance to search for, take, apprehend, imprison, and, if necessary for that Purpose, to open shut and lockfast Places as aforesaid; and Magistrates and Keepers of Prisons are hereby authorized and required to receive into and detain in Prison the Person of the Debtor or Obligant till liberated in due Course of Law, in like Manner as if Letters of Caption had been issued under the Signet.

XII. And be it enacted, That where any Person has acquired Right to an Extract of a Decree or Act of the Sheriff he may present to the Sheriff Clerk the Extract, with the Execution of Charge (if a Charge shall have been given), and Certificate of Registration (if the same shall have been registered), and a Minute endorsed on the Extract in the Form of the Schedule (Number 9) hereunto annexed (or as near thereto as Circumstances will permit), subscribed by him or a Procurator of Court, with the Assigment, Confirmation, or other legal Evidence of the acquired Right, praying for Authority (as the Case may be) to arrest, charge, point the Effects of, or (as the Case may be) to imprison, the said Debtor or Obligant, and open shut and lockfast Places; and the Clerk shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, "Fiat ut petitur," and he shall date and subscribe the same, and endorse the same Date on the Documents produced, and subscribe with his Initials the Date so endorsed; and the Extract, with such Deliverance, shall be a Warrant to arrest, charge, point, and open shut and lockfast Places, or (as the Case may be) to search for, take, apprehend, and imprison as aforesaid, at the Instance of such Person.

XIII. And be it enacted, that where a Debtor or Obligant is or his Moveables are within the Territory of any other Sheriff than the Sheriff from whose Books such Extract shall be lawfully issued, it shall be competent to present the Extract in the Bill Chamber of the Court of Session, or in the Court of the Sheriff within whose Jurisdiction the Debtor or Obligant is or his Moveables are, with a subscribed Minute endorsed thereon in Terms of the Schedule (Number 10) hereunto annexed (or as near thereto as Circumstances will permit), praying for the Authority and Concurrence of the Lords of Council and Session, or of the said Sheriff (as the Case may be), to arrest, charge, and point the Moveables of the said Debtor or Obligant, and to open shut and lockfast Places, all in Terms of the Warrant in the said Extract; and if there be no lawful Cause to the contrary, the Clerk in the Bill Chamber or the Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing this Deliverance, "Fiat ut petitur," and dating and subscribing the same; and it shall thereupon be lawful to arrest, charge, point, and open shut and lockfast Places, in the same Manner as if the said Extract had been originally issued from the Books of the Court of Session or concurring Sheriff.

XIV. And be it enacted, That where the Debtor or Obligant shall have been charged on a Warrant of Concurrence and the Execution recorded in the Books of the concurring Court, the Extract and Execution, with the Certificate of Registration, and a Minute in Terms of the said Schedule (Number 4) hereunto annexed (or as near thereto as Circumstances will permit) endorsed thereon, may be presented either in the Bill Chamber subscribed by a Writer to the Signet, or in the Court of the concurring Sheriff subscribed by a Procurator of Court, praying for Authority to imprison as aforesaid; and if there be no lawful Cause to the contrary, the Bill Chamber Clerk or Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing thereon this Deliverance, "Fiat ut petitur," dating and subscribing the same; and it shall thereupon be lawful to open shut and

*S.S. 14. 15. See as to competency of charging on one Con-  
curring Decree of Sheriff of another. See under former  
his. Smith & Skinner 4. Mar 1831 9S. 543*

lockfast Places, search for, take, apprehend, and imprison, in Manner hereinbefore provided.

XV. And be it enacted, That where a Warrant to imprison has been granted by any Sheriff in Manner hereinbefore provided, and where the Debtor or Obligant is within the Territory of another Sheriff, such Warrant may be presented, along with the Extract, Execution of Charge, and Certificate of Registration, either in the Bill Chamber or in such other Sheriff Court, and a Minute in Terms or to the Effect of the said Schedule (Number 10), praying for the Authority and Concurrence of the Lords of Council and Session or of the said Sheriff Court for executing the said Warrant; and if there be no lawful Cause to the contrary, the Clerk in the Bill Chamber or the Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing this Deliverance, "*Fiat ut petitur*," and dating and subscribing the same; and it shall thereupon be lawful to open shut and lockfast Places, search for, take, apprehend, and imprison, in the same Manner as if the said Warrant had been originally granted by the Court of Session or the concurring Sheriff.

XVI. And be it enacted, That from and after the said Thirty-first Day of December it shall be lawful to insert in Summonses raised before the Lords of Council and Session concluding for Payment of Money a Warrant (or Will) to arrest the Moveables, Debts, and Money belonging or owing to the Defender until Caution be found, acted in the Books of Council and Session, that the same shall be made forthcoming as accords of Law; and it shall be lawful to Writers to the Signet to subscribe and to the Keeper thereof and his Deputes to affix the Signet to such Summonses without any other Authority than this Act.

XVII. And be it enacted, That by virtue of such Warrant of Arrestment, and also by virtue of Letters of Arrestment raised upon any libelled Summons according to the present Practice, it shall be competent before executing the Warrant of Citation to arrest the Moveables, Debts, and Money belonging or owing to the Defender until Caution be found as aforesaid; and such Arrestment shall be effectual, provided the Warrant of Citation shall be executed against the Defender within Twenty Days after the Date of the Execution of the Arrestment, and the Summons called in Court within Twenty Days after the Diet of Appearance, or where the Expiry of the said Period of Twenty Days after the Diet of Appearance falls within the Vacation, or previous to the First Calling Day in the Session next ensuing, provided the Summons be called on the First Calling Day next thereafter; and if the Warrant of Citation shall not be executed and the Summons called in Manner above directed, the Arrestment shall be null, without Prejudice to the Validity of any subsequent Arrestment duly executed in virtue of the said Warrant.

XVIII. And be it enacted, That from and after the said Thirty-first Day of December it shall not be competent to execute any Arrestment as in the Hands of a Person furth of Scotland by Service at the Market Cross of Edinburgh, and Pier and Shore of Leith, but such Arrestment shall be executed by Delivery of a Schedule of Arrestment at the Record Office of Citations in the Court of Session, which Delivery shall be made and the Schedule registered and published in the same Manner as Charges are directed to be registered and published by an Act passed in the Sixth Year of the Reign of his late Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland*.

XIX. And be it enacted, That from and after the said Thirty-first

*Arrestment and Dependence.*

Concurrence to Warrant of Imprisonment granted in another Sheriff Court.

Warrant to arrest may be introduced into Summonses before the Court of Session.

*Infra*, § 17-22.

*As to Arrestment by Seller*, 19 & 20 V., c. 60, § 8.

*In Hands of Person abroad*, 19 & 20 V., c. 91, § 1.

*In Maritime Causes*, 1 W. 4, c. 69, § 28.

Arrestment may be executed before executing the Summons, but the Summons must be executed and called within a limited Period. 13 & 14 V., c. 36, § 20-23.

Arrestments against Persons furth of the Kingdom to be executed at the Record Office.

*Am. by* 19 & 20 V., c. 91, § 1.

*Execution*. 6 G. 4, c. 120, § 51, 52.

*Am. by* 13 & 14 V., c. 36, § 22.

*Arrestment. Recall, and Prescription.*

Sheriff's Precepts of Arrestment may be executed within Jurisdiction of another Sheriff.

Lord Ordinary in the Outer House may recall or restrict Arrestments, subject to Review.

*A. of S.* 8 June 1850; and see *A. of S.* 11 July 1826.

Sheriff may recall or restrict Arrestments, subject to Review.

See 16 & 17 V., c. 80, § 24.

Arrestments to prescribe in Three Years.

*Am.* 1669, c. 9. See *St.* 1581, c. 118; and 1681, c. 51.

Compearing Creditors to be conjoined, and poided Effects to be valued.

Effects to be left with and Schedule given to the Possessor.

Officer to report Poiding within Eight Days.

Day of *December* a Warrant or Precept of Arrestment granted by any Sheriff in Scotland, whether contained in a libelled Summons or proceeding upon a depending Action or liquid Document of Debt, may lawfully be executed within the Territory of any other Sheriff, the same being first endorsed by the Sheriff Clerk of such Sheriffdom, who is hereby required to make and date such Indorsation.

XX. And be it enacted, That from and after the said Thirty-first Day of *December* it shall be competent to the Lord Ordinary in the Court of Session before whom any Summons containing Warrant of Arrestment shall be enrolled as Judge therein, or before whom any Action on the Dependence whereof Letters of Arrestment have been executed has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in Time of Vacation, on the Application of the Debtor or Defender by Petition duly intimated to the Creditor or Pursuer, to which Answers may be ordered, to recall or to restrict such Arrestment, on Caution or without Caution, and dispose of the Question of Expenses, as shall appear just; provided that his Judgment shall be subject to the Review of the Inner House by a Reclaiming Note duly lodged within Ten Days from the Date thereof.

XXI. And be it enacted, That from and after the said Thirty-first Day of *December* it shall be competent for any Sheriff from whose Books a Warrant of Arrestment has been issued, on the Petition of the Debtor or Defender duly intimated to the Creditor or Pursuer, to recall or to restrict such Arrestment, on Caution or without Caution, as to the Sheriff shall appear just; provided that the Sheriff shall allow Answers to be given in to the said Petition, and shall proceed with the further Disposal of the Cause in the same Manner as in summary Causes, and his Judgment shall be subject to Review in the Court of Session.

XXII. And be it enacted, That an Act of the Parliament of Scotland passed in the Year One thousand six hundred and sixty-nine, concerning Prescriptions, shall be and is hereby repealed in so far as regards the Period of Prescription of Arrestments; and all Arrestments shall hereafter prescribe in Three Years instead of Five; and Arrestments which shall be used upon a future or contingent Debt shall prescribe in Three Years from the Time when the Debt shall become due and the Contingency be purified; but saving and reserving from the Operation hereof all Arrestments already used where the Ground of Arrestment is not an Action in Dependence at the Date of passing this Act.

XXIII. And be it enacted, That from and after the said Thirty-first Day of *December*, where an Officer of the Law shall proceed to poid moveable Effects, he shall, if required, before the Poiding is completed, conjoin in the Poiding any Creditor of the Debtor who shall exhibit and deliver to him a Warrant to poid; and on the Effects being poided the Officer shall cause them to be valued by Two Valuers, and One Valuation by them shall be sufficient.

XXIV. And be it enacted, That the Officer shall leave the poided Effects with the Person in whose Possession they were when poided; and he shall deliver to the Possessor a Schedule specifying the poided Effects, and at whose Instance they were poided, and the Value thereof.

XXV. And be it enacted, That the Officer shall, within Eight Days after the Day on which the Poiding was executed (unless Cause shall be shown why the same could not be done within the Period of Eight

XX. Hopetoun's Tr. 1 Dec. 1838, 1 D. 188.—Manson, 7 Dec. 1839, 2 D. 213.  
—Wilson, 27 June 1840, 2 D. 1238. *Morrison* 24 Nov 1847, 2 D. 146. *Lord*  
XXV. Sangster, 19 Dec. 1857, 20 D. 855.

*Petition for Recall shall be competent before the Inner House Hart 1874 24 Dec 1874 3 March 1876*

*Curran*  
*27th May*  
*1876*

Days), report the Execution thereof to the Sheriff, in which Execution he shall specify the Diligence under which the Poinding is executed, the Amount of the Debt, the Names and Designations of the Debtor and of the Creditor at whose Instance the Effects were pointed, the Effects pointed, the Value thereof, the Names and Designations of the Valuers, the Person in whose Hands they were left, and the Delivery of the Schedule as aforesaid; which Execution shall be subscribed by him and by the Two Valuers, who shall also be Witnesses to the Poinding, without the Necessity of other Witnesses.

*Poinding and Sale.*

XXVI. And be it enacted, That on the Execution being reported the Sheriff shall, if necessary, give Orders for the Security of the Moveables, and if they be of a perishable Nature for the immediate Disposal thereof, under such Precautions as to him shall seem fit; and if not so disposed of, and if no lawful Cause be shown to the contrary, he shall, if required, grant Warrant to sell them by public Roup, at such Time and at such Place, with such public Notice of the Sale, as may appear to the Sheriff most expedient for all concerned, and at the Sight of a Judge of the Roup to be named by the Sheriff; provided that the Sale shall not take place sooner than Eight Days nor at a longer Period than Twenty Days after the Date of the Publication of the said Notice of Sale; and the Sheriff shall order a Copy of the Warrant of Sale to be served on the Debtor, and on the Possessor of the pointed Effects, if he be a different Person from the Debtor, at least Six Days before the Date of the Sale, excepting in the Case of perishable Effects.

Sale to be advertised, and Notice to the Debtor.

XXVII. And be it enacted, That the pointed Moveables shall be offered for Sale as ordered at upset Prices not less than the appraised Values thereof; but if no Offerer appear, the Effects, or such Part thereof as, according to their appraised Value, may satisfy the Debt, Interest, and Expenses due to the poinding Creditor and conjoined Creditor, shall be delivered by the Judge of the Roup to the said poinding Creditor and conjoined Creditor, or to his or their authorized Agent, subject to the Claims of other Creditors, to be ranked as by Law competent.

Effects to be sold, or delivered to poinding Creditors.

XXVIII. And be it enacted, That on the Moveables being sold or delivered as aforesaid, the Judge of the Roup shall within Eight Days after the Date of the Sale make a Report to the Sheriff of the said Sale or Delivery; and if the Effects shall have been sold, he shall also within the said Space of Eight Days lodge with the Sheriff Clerk the Roup Rolls, or certified Copies thereof, and an Account of the Sum arising from and of the Expenses of the Sale, which Sum the Sheriff may, if he shall see Cause, order to be lodged in the Hands of the Sheriff Clerk; and the said Sum, after Deduction of lawful Charges, shall, if no Cause be shown to the contrary, be ordered by the Sheriff to be paid to the poinding Creditor and conjoined Creditor (provided the Amount does not exceed the Amount of the Debt, Interest, and Expenses), but subject to the Claims of other Creditors, to be ranked as by Law competent; and the Report and relative Documents, when lodged, shall be patent to all concerned on Payment of a Fee of One Shilling only.

Report and Price to be lodged.

XXIX. And be it enacted, That where any Effects are exposed to Sale as aforesaid it shall be lawful for the Poinder or any other Creditor to purchase the same.

Creditors entitled to purchase.

XXX. And be it enacted, That if any Person shall unlawfully intromit with or carry off the pointed Effects, he shall be liable, on

Unlawful Intromitter liable to Imprisonment or double the appraised Value.

XXVI. M'Neill, 13 Feb. 1841, 3 D. 554.—Munro, 23 June 1841, 3 D. 1054.—Morrison, 24 Nov. 1847, 10 D. 146.

XXX. Brown, 29 May 1849, 11 D. 1083. (See § 55.)

*Miscellaneous.*

Act not to affect  
Landlord's Hypo-  
thec.

Citations, etc.

*See 9<sup>th</sup> Vic. c. 67.*

One Witness.

Compensation.

Compensation,  
how to be paid.

Diligence under  
this Act.

*Supra*, § 5, 8, etc.

Act may be re-  
pealed, etc.

summary Complaint to the Sheriff of the County where the Effects were poulded or where he is domiciled, to be imprisoned until he restore the Effects or pay double the appraised Value.

XXXI. And be it enacted, That nothing herein contained shall affect the Landlord's Hypothec for Rents, or any Hypothec known in Law.

XXXII. And be it enacted, That Extracts, Citations, Deliverances, Schedules, and Executions may be either printed or in Writing, or partly both, and that, excepting in the Case of Poidings, more than One Witness shall not be required for Service or Execution thereof.

XXXIII. And be it enacted, That it shall be lawful for any Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act to make Application to the Lord High Treasurer, or to the Commissioners of her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the Time being, claiming such Compensation, giving at the same Time Notice of such Application to her Majesty's Advocate; and it shall be lawful for the said Lord High Treasurer, or Commissioners of the Treasury, to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer, or Commissioners of her Majesty's Treasury, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect to such other Office while he shall continue to hold the same.

XXXIV. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

XXXV. Provided always, and be it enacted, That Diligence executed under the Provisions of this Act shall have the same Effect as if such Diligence had been executed by virtue of Letters of Horning or Letters of Caption, or if Arrestments and Poidings had been executed under the Forms heretofore in use.

XXXVI. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

XXXII. Robb, 20 Jan. 1859, 21 D. 277.

## SCHEDULES REFERRED TO IN THE FOREGOING ACT.

## No. 1.

## WARRANT TO BE SUBJOINED TO EXTRACTS IN THE COURT OF SESSION, ETC.

And the said Lords grant Warrant to Messengers at Arms in her Majesty's Name and Authority to charge the said A. personally, or at his Dwelling Place, if within Scotland, and if furth thereof by delivering a Copy of Charge at the Record Office of the Keeper of the Records of the Court of Session, [state what the Party is decerned to do; if to pay Money, specify the Sum, Interest, and Expenses; or if to fulfil an Obligation, specify it as in the Decree or other Document,] and that to the said B. [specify the Name of the Person in whose Favour the Decree is pronounced] within [insert the appropriate Days] next after he is charged to that Effect, under the Pain of Poinding and Imprisonment, [if the Sum or any Part thereof be payable at a future Time, add here, "the Terms of Payment being always first come and bygone;"] and also grant Warrant to arrest the said A.'s readiest Goods, Gear, Debts, and Sums of Money in Payment and Satisfaction of the said Sum, Interest, and Expenses; and if the said A. fail to obey the said Charge, then to poid the said A.'s readiest Goods, Gear, and other Effects, and, if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places in Form as effairs. Extracted [specify Place and Date].

[Extractor's Signature.]

## No. 2.

## EXECUTION OF CHARGE.

Upon the Day of I Messenger at Arms [or Officer of Court], by virtue of [state Nature and Date of Extract and Decree, or Document whereupon it proceeds,] at the instance of B. [specify Name and Designation of Creditor] against A. [specify Name and Designation of Debtor or Obligor] passed and in her Majesty's Name and Authority lawfully charged the said A. to [state what the Party has been charged to do; if to pay Money, specify the Sum, Interest, and Expenses; or if to fulfil an Obligation, specify it as in the Extract], and that to the said B. within Days next after the Date of my said Charge, under the Pain of Poinding and Imprisonment. This I did by [state Mode of Execution, whether personally or otherwise], before and in Presence of C., Witness to the Premises.

[Officer's Signature.]

[Witness's Signature.]

## No. 3.

## CERTIFICATE OF REGISTRATION OF EXECUTION OF CHARGE.

Presented by A. B. [state Name and Designation], and registered in the General Register of Hornings on the Day of .

[Keeper's Signature.]

## No 4.

## MINUTE IN BILL CHAMBER FOR WARRANT TO IMPRISON.

[Place and Date.]

The Charge being expired and registered as per Execution and Certificate produced, Warrant is craved to search for, take, and apprehend the Person of the said A. [specify Name of Debtor or Obligor], and being so apprehended to imprison him within a Tolbooth or other warding Place, therein to remain until he fulfil the said Charge, and,

## PERSONAL DILIGENCE ACT, 1838.

if necessary for that Purpose, to open shut and lockfast Places; and Warrant also to Magistrates and Keepers of Prisons to receive and detain the said A. accordingly.

(Signed) A. B., W.S.

[The Clerk will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk.]

No. 5.

## MINUTE BY ASSIGNEE, ETC.

[Place and Date.]

Warrant is craved [state what is prayed for] at the Instance of [specify Name and Designation of the Applicant] as [Assignee or otherwise, as the Case may be], of [specify Name and Designation of the Person at whose Instance the Extract was issued]. Produced herewith [Assignment or Confirmation, or other legal Evidence of the acquired Right, as the Case may be]. Dated the Day of [and if for Imprisonment, Execution of expired Charge and Certificate of Registration shall be produced and Warrant craved as in No. 4].

(Signed) A. B.

[The Clerk will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk.]

No. 6.

## WARRANT TO BE SUBJOINED TO SHERIFF COURT EXTRACTS.

And I the said Sheriff grant Warrant to Messengers at Arms and Officers of Court to charge the said A. personally, or at his Dwelling Place [state what the Party is decreed to do; if to pay Money, specify the Sum, Interest, and Expenses; or if to fulfil an Obligation, state the Nature of it, as in the Decree or other Document], and that to the said B. [Name of the Person in whose Favour the Decree is pronounced], within [insert the appropriate Days] next after he is charged to that Effect, under the Pain of Poinding and Imprisonment, [if the Sum or Document or any Part be payable at a future Time, add here, "the Terms of Payment being first come and bygone;"] and also grant Warrant in Satisfaction of the said Sum, Interest, and Expenses to arrest the said A.'s readiest Goods, Debts, and Sums of Money; and if the said A. fail to obey the said Charge, then to apprise, poind, and distrain all the said A.'s readiest Goods, Gear, and other Effects; and, if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places in Form as effairs. Extracted, etc.

[Extractor's Signature.]

No. 7.

## CERTIFICATE OF REGISTRATION OF EXECUTION OF CHARGE IN SHERIFF COURT.

Presented by A. B. [Name and Designation], and registered in the particular Register of Hornings for the Shire of on the

Day of

[Keeper or Clerk's Signature.]

No. 8.

## MINUTE IN SHERIFF COURT FOR WARRANT TO IMPRISON.

[Place and Date.]

The Charge being expired and registered as per Execution and Certificate produced, Warrant is craved to search for, take, and apprehend the Person of the said A. [Name of Debtor or Obligant], and being so apprehended to imprison him within a Tolbooth or



other warding Place, therein to remain until he fulfil the said Charge, and, if necessary for that Purpose, to open shut and lockfast Places; and Warrant also to Magistrates and Keepers of Prisons to receive and detain the said A. accordingly.

(Signed) A. B.

[The Clerk will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk.]

No. 9.

#### MINUTE IN SHERIFF COURT BY ASSIGNEE, ETC.

[Place and Date.]

Warrant is craved [state what is prayed for] at the Instance of [specify Name and Designation of the Applicant], as [Assignee or otherwise, as the Case may be], of [specify Name and Designation of the Person at whose Instance the Extract was issued and in whose Right the Applicant is], produced herewith [say Assignment or Confirmation, or other legal Evidence of the acquired Right, as the Case may be]. Dated the Day of

[and if for Imprisonment, Execution of expired Charge and Certificate of Resignation shall be produced and Warrant craved to imprison as in No. 8].

*giolralun*

(Signed) A. B.

[The Clerk will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk.]

No. 10.

#### MINUTE FOR WARRANT OF CONCURRENCE.

[Place and Date.]

Warrant of Concurrence by the Lords of Council and Session is craved at the Instance of [specify Name and Designation of Applicant] for executing the within Warrant against the within-designed [specify Name of Debtor or Obligant]. A. B.

[If the Application is to a Sheriff, leave out "Lords of Council and Session," and say Sheriff of (inserting the Shire).]

[The Clerk of the Bills or the Sheriff Clerk, as the Case may be, will subjoin]

Fiat ut petitur.

[Dated and signed by the Clerk of the Bills or Sheriff Clerk, as the Case may be.]

### 1° & 2° VICTORIÆ REGINÆ.

#### CAP. CXVIII.

*An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in Scotland, and to reduce the Fees payable in those Courts.*—[16th August 1838.]

[This Act is printed entire. See A. of S. 24 Dec. 1838, as to Enrolment of Causes before Lords Ordinary.]

**W**HEREAS an Act was passed in the Fiftieth Year of the Reign of his Majesty King George the Third, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of*

50 G. 3 c. 112.

*Outer House  
Procedure.*

55 G. 3, c. 42.

55 G. 3, c. 70.

59 G. 3, c. 85.

1 &amp; 2 G. 4, c. 88.

6 G. 4, c. 120.

1 W. 4, c. 69.

3 &amp; 4 W. 4, c. 18.

Junior Lord Ordinary to act as one of the permanent Lords Ordinary.  
Am. 50 G. 3, c. 112,  
§ 29, 30; 6 G. 4,  
c. 120, § 1.

that Court; and another Act was passed in the Fifty-fifth Year of the Reign of his Majesty King George the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes*; and another Act was passed in the Fifty-fifth Year of the Reign of his said Majesty King George the Third, intituled, *An Act for better regulating the Formation and Arrangement of the judicial and other Records of the Court of Session in Scotland*; and another Act was passed in the Fifty-ninth Year of the Reign of his said Majesty King George the Third, intituled, *An Act to amend an Act passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, "An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by extending Trial by Jury to Civil Causes;"* and another Act was passed in the First and Second Years of the Reign of his Majesty King George the Fourth, intituled, *An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts*; and another Act was passed in the Sixth Year of the Reign of his Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland*; and another Act was passed in the First Year of the Reign of his late Majesty King William the Fourth, intituled, *An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the judicial Establishments of Scotland*; and another Act was passed in the Third and Fourth Years of the Reign of his late Majesty King William the Fourth, intituled, *An Act to provide for the Execution of the Duties performed by the Barons of Exchequer in Scotland in relation to the public Revenue, and to place the Management of the assessed Taxes and Land Tax in Scotland under the Commissioners for the Affairs of Taxes*: And whereas the Commissioners acting under Two several Commissions issued by his late Majesty, directing certain Persons to make Inquiry into various Matters relative to the Law and Administration of Justice in Scotland, have made Two Reports, which have been laid before Parliament: And whereas, in order to improve the Arrangement of judicial Business before the Lords Ordinary of the Court of Session, and to improve the Arrangements and Duties of the Clerks and other Officers of the said Court, and of the Court of Commissioners for Teinds in Scotland, and to diminish the Expense of the Administration of Justice, it is expedient that certain new Regulations should be adopted, and a further Reduction of the Number of the Clerks and Officers of the said Courts should be made, and that the Clerks and other Officers should derive their Remuneration from Salaries of a fixed Amount; and it is therefore necessary to alter and amend the said recited Acts and the existing Practice: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the junior Lord Ordinary of the Court of Session for the Time shall act as One of the permanent Lords Ordinary in the Outer House, and shall be on the same Footing in regard to the Duties of preparing and deciding Causes in the Outer House with the other Four permanent Lords Ordinary; and that it shall accordingly be competent to enrol Causes brought into Court for the first Time before the junior Lord Ordinary in the same Manner as before any other of the Four permanent Lords Ordinary, and the junior Lord Ordinary shall thereafter proceed in and determine the same in common Form: Provided always, that (with the Exception as to Actions of Reduction

and Teind Causes hereinafter mentioned) the other Duties of the junior Lord Ordinary shall continue as at present: Provided also, that it shall be competent to either Division of the Court, in case of a Pressure of Business before the junior Lord Ordinary, to relieve him by remitting the summary Causes now in Use to be prepared by the junior Judge to such of the other Lords Ordinary and for such Time as may appear expedient, or for the Courts from Time to Time to relieve him of the Duty of taking up a weekly Roll of new Causes for such Time as may be thought proper.

II. And be it enacted, That the present Practice of enrolling all recissory Actions or Actions of Reduction exclusively before the junior Lord Ordinary shall be discontinued, and it shall be competent to enrol such of the said Description of Actions as shall be brought into Court for the first Time before any of the Five Lords Ordinary in the Outer House, who shall severally proceed to prepare and dispose thereof in common Form; and upon the Occurrence of the first Vacancy in the Office of any of the present Five Lords Ordinary, either by Death, Resignation, or Removal into the Inner House, the second junior Lord Ordinary for the Time being shall thereafter be Judge in the Teind Causes and Proceedings which are at present appropriated to the junior Lord Ordinary.

III. And be it enacted, That the present Regulation by which each of the Four permanent Lords Ordinary is required in Rotation to officiate as Ordinary for the Week in the Outer House shall be discontinued, and that it shall be competent to enrol in the weekly printed Roll Causes which shall then be brought into Court for the first Time, before any of the Lords Ordinary, without regard to such Rotation; and it shall be competent to any Lord Ordinary to discharge the Duties of Lord Ordinary on Oaths and Witnesses.

IV. And be it enacted, That the said Lords Ordinary in the Outer House shall not be exclusively attached to either Division of the Court, but shall be attached equally to both Divisions thereof; and that the Partibus written upon Summonses, Letters, or Notes of Suspension, Advocation, or other Writ by which a Cause shall be originated in the Outer House, shall set forth the particular Division of the Court to which the Cause shall belong; and in the Event of the Cause being afterwards removed to the Inner House by Reclaiming Note, Cases, or otherwise, it shall be carried to the particular Division so set forth, and the Division to which the Cause is to belong shall be stated in the weekly printed Rolls: Provided always, that this Regulation shall not be held to apply to Causes depending in the Outer House at the Time when the Provisions of this Act shall take effect, but that all such Causes shall continue to belong to that Division of the Inner House to which the Lords Ordinary before whom such Causes then depending shall be severally attached.

V. And be it enacted, That instead of Four principal Clerks of the said Court of Session, and Four principal Clerks connected with Proceedings in Trials by Jury, being Two Issue Clerks and Two Record Clerks, the Number of principal Clerks shall be reduced as hereinafter provided to Four in all, who, in addition to the Duties heretofore discharged by the principal Clerks of Session, shall perform all Duties belonging to the principal Clerks connected with Trials by Jury as hereinafter provided, and shall also discharge the Duties of the present Clerks of the Bills in all Bill Chamber Proceedings which may take place in the Inner House of the Court of Session.

VI. And be it enacted, That, in order to carry such Reduction of the Number of Clerks into Effect, the Vacancy which has occurred in the Office of the senior Record Clerk, and the Vacancies which may

#### *Outer House Procedure.*

##### *Special Duties of junior Lord Ordinary.*

*Am. 58 G. 3, c. 64,  
§ 3, 4.  
See 20 & 21 V., c.  
56.*

Actions of Reduction to be enrolled before any Lord Ordinary.

*Rep. 1 & 2 G. 4, c. 38, § 5; 6 G. 4, c. 120, § 27.*

##### *As to Lord Ordinary in Teind Causes.*

*Am. 58 G. 3, c. 64, § 3.*

Causes to be enrolled weekly before any Lord Ordinary.

*Supra, § 2.  
13 & 14 V., c. 86, § 23.*

*Rep. 50 G. 3, c. 112, § 30.*

Lords Ordinary to be attached to either Division.

*Am. 50 G. 3, c. 112, § 29, 30; 6 G. 4, c. 120, § 1; 1 W. 4, c. 69, § 20.*

##### *Principal Clerks of Session.*

Vacancies of principal Jury Clerks not to be filled up.

*Clerks of Court.*Distribution of  
Duties of Issue  
Clerks.

hereafter occur in the other Offices of the said principal Clerks connected with Trial by Jury, shall not be filled up; and as Vacancies occur in the Offices of the said Two Issue Clerks, the Duties now falling to be performed by them shall be discharged as follows; on the first of the said Vacancies occurring, One of the principal Clerks in each Division shall be nominated by the President of that Division, who shall be conjoined with the remaining Issue Clerk in the Performance of those Duties in their respective Divisions; and on the remaining Vacancy occurring, the Two principal Clerks nominated as aforesaid, and their respective Successors, shall perform the said Duties, in their several Divisions of the Court respectively, in the same Manner as they have been performed by the present Issue Clerks; and the said principal Clerks are hereby enjoined and required to consult, advise, and act with the remaining Issue Clerk, and with one another, in the Performance of the said Duties, for the Purpose of preserving Uniformity of Practice: Provided always, that One of the principal Clerks so nominated, and his Successors, may act for and in the Absence of the other.

Distribution of  
Duties of Record  
Clerks.

VII. And whereas the senior Record Clerk, now deceased, has heretofore been attached to the First Division of the said Court in Business connected with Trial by Jury, and the junior Record Clerk is attached to the Second Division of the said Court in such Business: be it enacted, That the Duties which have heretofore fallen to be discharged by the said senior Record Clerk in the Inner House, and at the Register House connected with Inner House Causes, and at the Jury Trials which take place at the Sittings in *Edinburgh* in Causes belonging to the First Division, shall be performed by the principal Clerks of Session connected with that Division; and upon the Occurrence of a Vacancy in the Office of the said junior Record Clerk the Duties falling to be discharged by him in the Inner House, and at the Register House connected with Inner House Causes, and at the Jury Trials which take place at the Sittings in *Edinburgh* in Causes belonging to the Second Division, shall be performed by the principal Clerks connected with that Division; provided that the principal Clerks who shall be nominated to perform the Duty of Issue Clerks as aforesaid shall thereupon be relieved of the Duty of attending Jury Trials; and the Duties now falling to be discharged before the Lords Ordinary by the said Record Clerks and their Assistant, relative to Causes connected with Trials by Jury, shall from and after the Commencement of this Act be performed by the Depute and Assistant Clerks, each Depute and Assistant Clerk taking charge in the Outer House as aforesaid of those Causes which depended in or belong to his own Office; and the said Causes so appropriated to Trial by Jury, or ordered to be so tried, shall not be sent to the Jury Clerks Offices until the Record is ready to be closed and Issues are to be prepared: Provided always, that the Practice of remitting such Causes to the Jury Roll shall remain as at present, but, being so remitted, such Causes shall not be re-transmitted to the Court of Session Roll, but shall be dealt with in the Jury Court Roll in all respects and subject to the like Review as if they had been in the Court of Session Roll.

Duties of principal  
Clerks may be  
discharged in his  
Absence by other  
Clerks.

VIII. And be it enacted, That in case of Absence, from necessary Cause, of any principal Clerk, his Duties may be discharged by any of the remaining principal Clerks, or by any Person appointed by the Division of the Court to which such principal Clerk may belong either from among the Assistant Clerks in the Inner House or the Depute Clerks in the Outer House; and all Interlocutors which have been or shall hereafter be written by any such Persons so appointed and acting under Authority of the Court, being duly signed, shall be

and they are hereby declared to be valid and effectual, any Law or Practice to the contrary notwithstanding.

IX. And be it enacted, That no Payment shall be made to any principal or Depute Clerk of Session as Clerk to Queen's Processes, and the said Office of Clerk to Queen's Processes is hereby abolished, and Processes conducted on behalf of her Majesty shall hereafter be under the Care of the Clerks of Session generally; and so much of the before recited Act passed in the First and Second Years of the Reign of his Majesty King George the Fourth as provides that in the Event of a principal Clerk of Session being appointed One of the principal Clerks of the Bills, he shall receive an additional Salary of Three hundred Pounds per annum, shall be and the same is hereby repealed.

X. And be it enacted, That the Assistant Clerks of Session in the Inner House shall be reduced to Four in Number in Manner herein provided; and no Successors shall be appointed to the present Assistant Clerks connected with Jury Cases; and the said Assistant Clerks in the Inner House, instead of being paid by Fees, shall receive a Salary of Three hundred and fifty Pounds each per annum.

XI. And be it enacted, That the Assistant Clerks in the Inner House shall, in addition to their other Duties, take charge of all Bill Chamber Cases brought into the Inner House, and shall in like Manner take charge of all Jury Cases in the Inner House, on the Death, Resignation, or Removal of the present Issue Clerks and Record Clerks; and in case both or either of the Assistants of the Issue and Record Clerks shall resign or be removed or predecease that Event, the Duties of such Jury Clerks Assistant so resigning, removed, or predeceasing shall in the meantime be discharged by the Survivor or by the other Assistant Clerks, or in such Way and Manner as the Court of Session may direct in virtue of the Powers conferred by this Act.

XII. And whereas it is necessary that there should be a Depute Clerk of Session for each Lord Ordinary as hereinafter provided; be it enacted, That from and after the passing of this Act there shall be Five Depute Clerks in the Outer House, who shall be appointed in the same Manner as the Depute Clerks in the Outer House now are, and shall receive Salaries of Four hundred Pounds per annum each; and there shall be an Assistant appointed to each Depute Clerk; and in addition to the Duties at present performed by them, and to be performed by them before the Lords Ordinary in Jury Causes as aforesaid, the Depute and Assistant Clerks shall take charge of all Processes connected with Trial by Jury in the Outer House as Vacancies occur in the respective Offices of the Record Clerks in that Department; and the Depute Clerks shall, on the Death, Resignation, or Removal of the Record Clerks, or on being directed by the Lord President of either Division, attend in rotation the Circuits at which Jury Causes shall be tried, and shall act as Clerks of Court at such Trials, each of the said Depute Clerks so attending receiving an Allowance of Three Pounds Three Shillings per Day during his necessary Absence from *Edinburgh*, in full of all Expenses of each Circuit: Provided always, that a Depute and Assistant Clerk shall be attached to and shall attend at the Bar of each of the Five Lords Ordinary in the Outer House as hereinafter provided: And provided also, that it shall be competent to the Lord President of either Division, on Application by any Lord Ordinary, to direct that any of the ordinary Judges Clerks of either Division of the Inner House, or any Person receiving Compensation or retired Allowance under this Act, shall discharge such Duties as the Absence of any Clerk officiating before or in attendance upon any Lord Ordinary, or the State of Business depending before him, shall render necessary.

XIII. And be it enacted, That the Remuneration of the Assistant Clerks employed in the Business of the Outer House, instead of de-

#### *Clerks of Court.*

Office of Clerk of Queen's Processes abolished.

Assistant Clerks in the Inner House.

Duties of Assistant Clerks.

Depute Clerks in the Outer House, and Assistants.

Salaries of Assistant Clerks in the Outer House.

Clerks of Court.

pending, as at present, upon Fees, shall consist of a fixed Salary of Three hundred and fifty Pounds per annum each; and the said Assistant Clerks both in the Inner and Outer House are hereby prohibited from charging or receiving any Fees, except for Copies of Interlocutors or other Papers ordered or required, for which an Allowance shall be paid at the Rate of Fourpence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, without any further Charge for Stationery: Provided always, that where, upon Remit from the Court or Lord Ordinary, any of the said Depute or Assistant Clerks shall be directed to make Investigations, and prepare any Report, Calculation, or State, the Charges therefor shall be regulated by the Time and Labour in each particular Case, and shall be in all Cases subjected to the Review and Taxation of the Auditor of Court; and the Emoluments arising from such Employment shall be paid into the Fee Fund.

Two Clerks of the  
Bill Chamber.

XIV. And be it enacted, That the Offices of the whole of the present Clerks in the Bill Chamber connected with Bill Chamber Procedure shall be and the same are hereby abolished; and it shall be lawful for her Majesty, her Heirs and Successors, from and after the passing of this Act, to appoint Two fit Persons to be Clerks of the Bills, and such Clerks of the Bills shall, under the principal Clerks of Session, have the whole Charge of the Bill Chamber Department, and the said Two Clerks shall be responsible for the reputed Solvency of Cautioners and for consigned Money, in like Manner as the Bill Chamber Clerks are at present, and shall find Caution as the Court shall direct; and the Clerks of the Bills shall receive a Salary of Two hundred and fifty Pounds each per annum; and the said Clerks are hereby prohibited from charging or receiving any Fees, except for copying Bills of Suspension or other Papers, Copies of which may be ordered or required from them, for which an Allowance shall be paid at the aforesaid Rate of Fourpence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, including Stationery; and all Fees in the Bill Chamber, except those allowed by this Act, are hereby abolished, including the Fees on consigned Money and Interest during the Period of Consignation: Provided further, that no Successor shall be appointed to the present Keeper of the Register of Abbreviates of Adjudications, but upon the Death, Resignation, or Removal of *James Mercer*, now officiating in that Office, the said Office of Keeper of the Register of Abbreviates of Adjudications shall be abolished, and the Duties thereof performed by the Keeper of the Register of Hornings and Inhibitions in such Manner and subject to such Conditions and Regulations as her Majesty's principal Secretary of State for the Home Department for the Time being shall direct.

Distribution of  
Business of the  
Court.

XV. And whereas by the said recited Act of the First Year of the Reign of his late Majesty it is enacted, That the Two Vacancies which should then next occur in the Office of principal Clerk of Session, as also in the Office of Depute Clerk of Session, should not be supplied, and that in like Manner the Vacancies in the Offices of the other Clerks belonging to the Court of Session should not be supplied until a certain Event therein mentioned: And whereas in virtue of the said Act certain Vacancies which have since occurred have not been supplied, whereby the Number of principal Clerks of Session has been already reduced from Six to Four, and the Number of Depute Clerks has been reduced from Six to Four, and the Number of Assistants to the Depute Clerks has been reduced from Six to Four: And whereas the Court of Session have, by Act of Sederunt dated the Eleventh Day of *March* One thousand eight hundred and thirty-seven, enacted certain Regulations for apportioning the Duties among the remaining Clerks;

and it is expedient, for the Purpose of carrying into effect the said last recited Act and this Act, in so far as required and not already carried into effect by the said Act of Sederunt, that further Regulations should be made for distributing the Business of the Court and arranging the Duties of the several Clerks; be it enacted, That *John Pringle* Depute Clerk, and his Assistant, shall be attached to the Business depending before Lord *Cockburn*; *Thomas Bruce* Depute Clerk, and his Assistant, to the Business depending before Lord *Fullerton*; the additional Depute Clerk to be appointed as aforesaid, and the Assistant in the Office of the late *Robert Menzies* Depute Clerk, to the Business depending before Lord *Moncrieff*; *Adam Wilson* Depute Clerk, and his Assistant, to the Business depending before Lord *Jeffrey*; *Thomas Beveridge* Depute Clerk, and his present Assistant, to the Business depending before Lord *Cuninghame*; and the said Two Clerks hereinbefore provided to the Department of the Bill Chamber; and the said Clerks and their Successors respectively shall be attached to and officiate before the said Lords Ordinary and their Successors respectively; that in Terms of these Regulations all Causes depending before the several Lords Ordinary above named shall be transmitted to the respective Offices of the Depute Clerks above named, according as they are to be severally attached to the said Judges and their Successors; that those Causes in the Inner House falling to be transmitted back to the Outer House shall be transmitted to the Office of the Depute Clerk who shall, in virtue of this Act, be attached to the Lord Ordinary to such Causes respectively; that all Causes which may come to depend in the Offices of *John Pringle* and the said deceased *Robert Menzies* Depute Clerks, and which shall be removed by Reclaiming Note or otherwise to either Division of the Inner House, in Terms of the Provisions hereinbefore contained, shall be transmitted either to the Office held by *Macvey Napier* principal Clerk in the First Division, or to the Office held by *Thomas Thomson* principal Clerk in the Second Division; that in like Manner all Causes removed to the Inner House from the Offices of *Thomas Bruce* and *Adam Wilson* Depute Clerks shall be transmitted either to the Office held by *George Joseph Bell* principal Clerk in the First Division, or to the Office held by *James Fergusson* principal Clerk in the Second Division; that all Causes depending before the junior Lord Ordinary at the Time when this Act shall take effect, which may be removed to the Inner House by Reclaiming Note or otherwise, shall be transmitted to the Office of the principal Clerk which corresponded with the Office of the Depute Clerk in which such Causes formerly depended: Provided always, that such of the said Causes as depended in the Offices held by *William Pringle* Depute Clerk, deceased, and by *Adam Wilson* Depute Clerk, as well as all Causes which may come to depend before the junior Lord Ordinary in the Outer House, and which may be removed to the Inner House by Reclaiming Note or otherwise, shall be transmitted to the senior principal Clerk's Office of that Division of the Court to which such Causes shall belong in Terms of this Act; and the Practice as to Reclaiming Notes from the Bill Chamber being lodged with any of the Inner House Clerks of either Division of the Court shall remain as at present; and the same Rule shall be followed with respect to the Transmission of Causes taken to report from the Bill Chamber.

XVI. And be it enacted, That the Salaries of each of the Judges Clerks and Keepers of the Inner and Outer House Rolls, to be appointed after the Death, Resignation, or Removal of the present Incumbents, shall be Four hundred Pounds to each of the Keepers of the Inner House Rolls, instead of Five hundred Pounds as at present, and to the ordinary Judges Clerks Two hundred Pounds per annum each, instead of Three hundred Pounds as at present, with an Addition of Ten

Judges Clerks and  
Keepers of Inner  
and Outer House  
Rolls.

Judges Clerks.

Pounds per annum to the said Salaries of the ordinary Judges Clerks respectively for each Year of their Service until such Salaries shall amount to Three hundred Pounds per annum to each ordinary Judges Clerk who shall have served as such for Ten Years; and so much of the said recited Act of the First and Second Years of his Majesty King George the Fourth as provides that certain Allowances shall be paid by the Collector of the Fee Fund to such Person or Persons as should be appointed by the Court of Session, for forming a Fund for the Purpose of providing eventual Liferent Annuities to the Judges Clerks and Keepers of the Inner House Rolls, shall be and the same is hereby repealed.

Annuity Fund to  
Judges Clerks and  
Keepers of Inner  
House Rolls.

XVII. And whereas a Fund has been accumulated under the Provisions of the said recited Acts of the First and Second Years of the Reign of his Majesty King George the Fourth, and the Acts of Sederunt of the Court of Session relative thereto, for the Purpose of providing eventual Liferent Annuities to the said Judges Clerks and Keepers of the Inner House Rolls; and the present Judges Clerks and Keepers of the Inner House Rolls, and certain existing Annuitants, are interested in the said Fund and in the Contributions directed to be made thereto under the Provisions of the said Act which are hereby repealed as aforesaid: And whereas it is expedient to provide for the Continuance of equivalent Liferent Annuities to the said existing Annuitants, and also to the Judges Clerks and Keepers of the Inner House Rolls, and their Successors in Office, out of the public Revenue; be it enacted, That the Holders of the said accumulated Fund shall be and they are hereby authorized and required to pay over and assign the said accumulated Fund to the Lord High Treasurer or Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the Time being, or to such Person or Persons as they shall appoint, who is or are hereby empowered to require an Account thereof, and call for and receive the same, and discharge the Holders thereof, and which shall be applied and disposed of as the said Lord High Treasurer or Commissioners may think fit to direct; and Liferent Annuities shall be payable and paid to the said existing Annuitants and Judges Clerks and Keepers of the Inner House Rolls, and their Successors in Office, equivalent to those which they would have had Right to receive under the Provisions of the said last recited Act and Acts of Sederunt relative thereto, and in the Manner and under the Conditions therein contained, out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer in Scotland.

Extractors.

XVIII. And be it enacted, That instead of the Duty of extracting the Acts and Decrees of the Court of Session being performed by Four Extractors and Eight ingrossing Clerks, nominated by the principal Clerks of Session during Pleasure, the Duty of preparing and superintending the Preparation of Extracts shall be intrusted to One principal Extractor, to be appointed by her Majesty, her Heirs and Successors, and such principal Extractor shall not practise before the Court of Session, or hold any official Situation in the said Court other than in Terms of this Act, and shall attend in and perform the Duties of the Office in Person, with the Aid of One Assistant nominated by him and holding an Appointment at Pleasure under him, and for whom he is to be responsible, and who, in the Event of Absence from necessary Cause of such principal Extractor, shall be empowered to subscribe and authenticate the Extracts; and in preparing Extracts, and Record Copies thereof, printed Forms, in Manner or to the Effect required by the said Act of the Fiftieth Year of his Majesty King



*George the Third*, shall be used, the Blanks in such Forms being filled up in Writing; and such principal Extractor shall from Time to Time employ such ingrossing Clerks as he shall think necessary for the Performance of the Business of the Office: Provided always, that in any new Appointments to be made under this Act a Preference shall be given to Persons removed from any Office under this Act who may be duly qualified to discharge the Duties thereof: Provided also, that the junior principal Clerk of Session for the Time being shall superintend and direct the Preparation of Extracts, by giving such Directions or Instructions from Time to Time as he may think fit or be by the Court directed to give, which Directions or Instructions the Extractor is hereby required to comply with: Provided always, that in order to give due Efficiency to the foregoing Provisions the junior Clerk of Session for the Time being, from Time to Time as he may think proper, and at any rate, shall, Fourteen Days before the Termination of each Winter and Summer Session of the Court, report to the Court how far the Duties of the principal Extractor and his Assistants and Clerks are properly discharged, with such other Matters touching the same as he shall deem fit to be so reported.

XIX. And be it enacted, that the principal and Assistant Extractors shall be paid wholly by Salaries; and the Salary of the principal Extractor shall be Five hundred Pounds per annum, and the Salary of the Assistant Extractor shall be Three hundred Pounds per annum; and the ingrossing Clerks shall be paid at the aforesaid Rate of Fourpence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, without any further Charge for Printing or Stationery; the Party ordering the First Extract paying as aforesaid for each Page both of the Copy given out and of the Record Copy; and it shall be held illegal and an Act of Malversation in Office for the principal or Assistant Extractor to participate in the Charges for copying payable to such ingrossing Clerks.

XX. And be it enacted, That the Office of Keeper of the Records, established by the said Act passed in the Fifty-fifth Year of the Reign of his Majesty King *George the Third*, shall be and the same is hereby abolished; and the Duties of the Office shall be performed by the principal Extractor and his Assistant, with the Aid of a Clerk, in case it shall appear to the said principal Extractor to be proper and necessary to appoint such Clerk, who shall receive such Salary, not exceeding One hundred Pounds per annum, as shall be fixed by the said principal Extractor; and no Fees shall hereafter be received by any Person performing the Duties of the said Office.

XXI. And be it enacted, That the Offices of Keeper of the Minute Book and Keeper of the Record of Edictal Citations shall, upon the Death, Resignation, or Removal of the present Incumbents, be conjoined, and the Duties thereof performed by One Officer, who shall be appointed by her Majesty, her Heirs and Successors; and these Duties shall be performed by the Holder of the said Offices in Person, with the Aid of a Clerk to be appointed by him; and such Officer shall receive a fixed Salary of Three hundred Pounds per annum, and his said Clerk shall receive a Salary of One hundred and thirty Pounds per annum; and such Salaries shall be in lieu of all Fees or Perquisites, and of any Profits arising from the Sale of the Minute Book or otherwise: Provided always, that in order to bring the Conjunction of the said Two Offices the sooner into effect it shall be lawful to the Commissioners of her Majesty's Treasury, or any Three of them, to make such Arrangement with the present Holders of the said Offices, and to award to either of them who shall resign his Office such Compensation, not exceeding the Amount of his present Salary and Emoluments, as to the said Commissioners shall seem proper.

*Extractors.*

Salary of Extractors.

Ingrossing Clerks.

Keeper of the Records.

Keeper of the Minute Book and Record of Edictal Citations.

*Other Officers of  
Court, etc.*

Minute Book, how  
to be printed.

*Rep. A. of S. 11*  
March 1789.

Collector and Ac-  
countant of the  
Fee Fund.

Auditor to be paid  
by Salary.

*See A. of S. 6 Feb.*  
1806, *establishing*  
*Audit.*

Macers.

Teind Clerks.

Teind Clerks, Ex-  
tracts, Accounts,  
etc.

XXII. And be it enacted, That the Minute Book of the Court of Session and Teind Court, the Record of Edictal Citations, the weekly Calling List of Causes, and the weekly printed Roll of Outer House and Teind Causes, shall be printed by the respective Keepers thereof, and shall be sold to the Public at the lowest Rate which will defray the necessary Expense of printing the same, and such Keepers shall annually exhibit an Account thereof to the Auditor of Court, who is authorized to examine and audit the same: Provided always, that the said Court may regulate the Mode of such Sale, and by whom the same shall be made, and the Proceeds thereof accounted for; and in case such Sale shall be insufficient to defray the Expense of Printing, the Balance shall be paid out of the Fee Fund.

XXIII. And be it enacted, That the Salary and Emoluments of the Collector of the Fee Fund shall not exceed Four hundred Pounds per annum, paid in the same Manner as the present Salary and Emoluments are paid; and upon any Vacancy hereafter occurring in the said Office his Successor shall be appointed by her Majesty, her Heirs and Successors; and the Salary of the present Accountant of the Fee Fund, while he shall hold the said Office, shall be One hundred Pounds: Provided always, that the Offices of the said Collector and Accountant of the Fee Fund may be abolished by any Act to be passed during the present Session of Parliament, or to be hereafter passed, and their Duties transferred to other Persons.

XXIV. And be it enacted, That the Auditor of Accounts in the said Court, instead of being paid by Fees, shall receive a fixed Salary of Seven hundred Pounds per annum, with the Accommodation of Office Room, or such a reasonable Allowance for the same as the said Court shall direct.

XXV. And be it enacted, That as Vacancies occur the Salaries allowed to each of the Macers of Court shall be limited to One hundred Pounds per annum.

XXVI. And be it enacted, That the Office of the principal Clerk of the Commissioners for Teinds shall be and the same is hereby abolished, and the Business heretofore discharged by the Teind Clerks shall be in future discharged by the present First and Second Depute Clerks of Teinds and their Successors in Office, the said present First Clerk being hereafter to be named the Clerk of Teinds, and the said present Second Clerk being hereafter to be named the Depute Clerk of Teinds; and upon the Death, Resignation, or Removal of the said Clerk or Depute Clerk their Successors shall be appointed by her Majesty, her Heirs and Successors; and the Salary of the Clerk of Teinds shall be Three hundred Pounds per annum, and the Salary of the Depute Clerk shall be Two hundred and fifty Pounds per annum, besides the Emoluments respectively allowed to such Clerk and Depute Clerk by this Act: Provided always, that it shall be lawful for her Majesty, her Heirs and Successors, from and after the passing of this Act to appoint a fit Person to be Keeper of the Records in the Teind Office, with an Allowance not exceeding One hundred Pounds per annum, in case it shall be judged expedient to make such Appointment; and it shall be the Duty of such Keeper to arrange and index the Records and Processes in the Teind Office, so as to render them useful and accessible to the Public, and to perform such other Duties in the said Office as may be directed in his Commission, or by the Court of Session in virtue of the Powers herein given.

XXVII. And be it enacted, That the Provisions and Regulations for abridging the Form of extracting Decrees of the Court of Session contained in the said recited Act of the Fiftieth Year of the Reign of his Majesty King George the Third and in this Act shall be and the same are hereby extended and applied to Extracts of Acts and Decrees

pronounced by the Court of Commissioners for Teinds, except in Processes of Valuation of Teinds and other Cases where full Extracts may be required by the Parties; and the Provisions and Regulations which are or may be applicable to auditing of Accounts of Expenses in the Court of Session by the Auditor of the Court shall be and the same are hereby extended and applied to Accounts of Expenses in the Court of Commissioners for Teinds, which shall be subject to be audited and taxed by the said Auditor in like Manner as Accounts of Expenses in the Court of Session; and the Business of the Teind Office shall in other respects continue as at present: Provided always, that in those Cases in which the Clerk of Teinds may be appointed by Remit from the Court or Lord Ordinary, or may be employed by any Party or Parties in a Cause, to act as an Accountant, or in the Preparation of States, Schemes, or Calculations for regulating or adjusting the Rights of Parties, the Charges to be made by the Clerk of Teinds shall be regulated according to the Time and Labour in each particular Case, but subject to the Review and Taxation of the Auditor of the Court of Session in like Manner as Accounts of Expenses; and the Emoluments arising from such Remits to or Employment of and Charges by the said Clerk of Teinds shall belong to such Clerk of Teinds: Provided further, that it shall be competent to the Court or Lord Ordinary, wherever it shall appear necessary for the due Dispatch of Business, to make such Remits to act as aforesaid to any other properly qualified Person, and that it shall be competent to the Parties, by mutual Agreement, to employ any Person whom they shall think proper to act as aforesaid, except in the Preparation of Schemes of Locality: Provided also, that the said Depute Clerk of Teinds shall continue to discharge the Duty of extracting Acts and Decrees pronounced by the Court of Commissioners for Teinds, and shall receive Payment for preparing the same at the Rate of Sixpence for each Page of One hundred and fifty Words, and One Shilling for each Page of States or Schemes in Figures, without any further Charge for Printing or Stationery, the Party ordering the First Extract paying as aforesaid for each Page both of the Copy given out and of the Record Copy.

XXVIII. And be it enacted, That the Fees contained in the Schedule annexed to this Act, along with the Fees presently payable upon Extracts of Deeds recorded in the Books of Council and Session, shall hereafter be paid into the Fee Fund of the Court of Session; and all other Fees, Dues, and Perquisites payable to the Clerks or Officers of Court, or of the Commissioners for Teinds, are and shall be abolished, under the Exceptions hereinbefore made; and the Salaries and Allowances made and provided by this Act shall be payable quarterly, free of all Deductions, out of the said Fee Fund, under the Provisions, in case of Insufficiency of the said Fund, contained in the said Act of the Fiftieth Year of the Reign of his Majesty King George the Third.

XXIX. And be it enacted, That Summonses in Admiralty Causes may be raised and pass under the Signet in like Manner as other Summonses before the Court of Session now do.

XXX. And be it enacted, That if any Clerk, Extractor, or other Officer of Court shall neglect his Duty, or shall be guilty of any Malversation in Office, or shall exact or receive any Fees or Perquisites other than those due to him in virtue of his Office or contrary to Law, it shall be competent for the Court of Session, on such Charge or Charges being proved in any summary Application by Petition and Complaint at the Instance of the Party or Parties aggrieved, or of her Majesty's Advocate for the Time being, to pronounce such Judgment as in the Circumstances of the Case may seem just, not exceeding Deprivation of Office and Expenses of the Proceedings, besides the Repayment of any such Fees or Perquisites unduly received, which shall

*Admiralty.  
Miscellaneous.*

The Fee Fund.

Admiralty Summonses.  
*Am. 1 W. 4, c. 69,  
§ 21.*

Officers of Court may be summarily removed for Malversation.

*See 12 & 13 V., c. 51, § 21.*

*Miscellaneous.  
Repeal, etc.*

Compensation.

be paid either to the Party complaining or to the Fee Fund, as the Court shall direct.

XXXI. And be it enacted, That it shall be lawful for any Clerk or Officer of the Court of Session, or other Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act, to make Application to the Lord High Treasurer or to the Commissioners of her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the Time being, claiming such Compensation, giving at the same Time Notice of such Application to her Majesty's Advocate for *Scotland*; and it shall be lawful for the said Lord High Treasurer or Commissioners of the Treasury to investigate such Claim and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer or Commissioners, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall, under all the Circumstances of the Case, and having reference to the Nature of the Appointment and the Duration of the Service, think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Thirty Days from the Day on which the same shall be granted if Parliament shall then be sitting, and if not, then within Thirty Days after the then next Sitting of Parliament; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that it shall be a Condition of every such Grant that the Compensation so granted, in the event of the Appointment thereafter of any of the said Persons to any Office of Profit or Emolument under the Crown, shall abate or wholly cease during the Period in which such Person shall hold such Office, so as that the Compensation and Emolument thereof taken together shall not exceed the Emoluments of the Office in respect of which Compensation has been granted.

Compensation,  
how to be paid.

XXXII. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Court of Session  
to make Acts of  
Sederunt.

XXXIII. And be it enacted, That the Court of Session shall be and is hereby empowered from Time to Time from and after the passing of this Act to make such further Regulations by Act of Sederunt as the said Court may deem meet for the Purpose of carrying into effect the Purposes of this Act, and of duly apportioning the Business and regulating the Duties to be performed by the several Clerks and Officers of Court, and also for the Purpose of regulating any additional Duties which the Court may think fit to require to be performed by any of the Judges Clerks, and which Regulations such Clerks and Officers shall be respectively bound to observe without any Claim to further Remuneration; and the said Court may meet for the above Purposes during Vacation as well as during Session, and may alter and amend such Regulations from Time to Time: Provided also, that within Fourteen Days from the Commencement of every future Session of Parliament there shall be transmitted to both Houses of Parliament Copies of all Acts of Sederunt passed under the Powers herein given.

Acts repealed.

XXXIV. And be it enacted, That all Laws, Statutes, Acts of Sederunt, and Usages shall be and the same are hereby repealed in so far as they may be in any respect inconsistent or at variance with the



## BILL CHAMBER.

s. d.

|                                                                                                                                                                  |   |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| Bills or Notes of Suspension or Advocation, Suspension and Interdict, and Answers thereto, or other original Application or first Step, except Plack Bills, each | 5 | 0 |
| Bills for loosing Arrestments and Answers thereto, Notes and Answers thereto, each                                                                               | 2 | 6 |
| Accounts of Expenses, each (see "Miscellaneous Papers")                                                                                                          | 2 | 6 |
| Bonds of Caution on being taken out                                                                                                                              | 2 | 6 |
| Certificates or Extracts of Judgment                                                                                                                             | 2 | 6 |

## EXTRACTS.

|                                                                                                       |    |   |
|-------------------------------------------------------------------------------------------------------|----|---|
| Decrees of Locality (instead of L.4, 13s. 4d. presently paid to the Teind Clerks, besides other Fees) | 40 | 0 |
| Decrees of Valuation (instead of L.7, 4s. 6d. presently paid to the Teind Clerks, besides other Fees) | 40 | 0 |
| All other Decrees, if in Foro                                                                         | 15 | 0 |
| Decrees in Absence, Acts, Abbreviates of Adjudication, Diligences, and Protestations, each            | 10 | 6 |

## MISCELLANEOUS PAPERS.

|                                                                                                                                    |    |   |
|------------------------------------------------------------------------------------------------------------------------------------|----|---|
| Certified Copy of Proceedings for Appeal to the House of Lords                                                                     | 40 | 0 |
| Certified Copy of Pleadings or Interlocutors by a principal Clerk or his Assistant                                                 | 2  | 6 |
| Oaths of Parties, Witnesses, or Havers, if in Presence of a Lord Ordinary or the Inner House, each                                 | 2  | 6 |
| if on Commission                                                                                                                   | 1  | 0 |
| Bonds of judicial Caution, on being taken out                                                                                      | 10 | 0 |
| Prepared States and Schemes, printed                                                                                               | 15 | 0 |
| written                                                                                                                            | 10 | 0 |
| Memorials and Abstracts                                                                                                            | 10 | 0 |
| Minutes of Election of a common Agent                                                                                              | 2  | 6 |
| For printed additional Appendices or other Papers, boxed for the Judges of the Inner House, not being Pleadings in the Cause, each | 2  | 6 |
| Notes for Searches, if under Ten Years from the Date of the Order, each Search                                                     | 2  | 6 |
| 10 Years and under 25                                                                                                              | 7  | 6 |
| 25 Years and upwards                                                                                                               | 12 | 6 |
| for extracted Processes in the Teind Record                                                                                        | 5  | 0 |
| Accounts of Expenses                                                                                                               | 5  | 0 |
| And in lieu of the Auditor's Fees at present payable, the following Rates:—                                                        |    |   |
| Accounts under L.10                                                                                                                | 2  | 6 |
| 10 and under L.20                                                                                                                  | 5  | 0 |
| 20 and under 50                                                                                                                    | 7  | 6 |
| 50 and under 100                                                                                                                   | 10 | 0 |
| 100 and under 150                                                                                                                  | 15 | 0 |
| 150 and under 200                                                                                                                  | 20 | 0 |
| 200 and under 300                                                                                                                  | 30 | 0 |
| 300 and under 500                                                                                                                  | 40 | 0 |
| 500 and under 600                                                                                                                  | 60 | 0 |

And for Accounts exceeding L.600 the Fee to be increased at the Rate of 5s. for every L.100 or Part of L.100.

The Fees in the preceding Schedule to apply to all Causes and Proceedings in the Court of Session and Court of Commissioners for Teinds, and also to Jury Causes; but shall not apply to Maritime or Consistorial Causes, nor to Applicants for the Benefit of the Poor's Roll, or Persons pursuing or defending in forma pauperis, nor to any Proceedings which are at present exempt from Fees by any Act of Parliament now in force.

## 1° &amp; 2° VICTORIÆ REGINÆ.

## CAP. CXIX.

*An Act to regulate the Constitution, Jurisdiction, and Forms of Process of Sheriff Courts in Scotland.*—[16th August 1838.]

[*Sheriff Court Act, 1838. Am. by 16 & 17 V., c. 80.*]

§ XI. And be it enacted, That the Citation and farther Procedure in such summary Removing shall, in so far as not provided for by this Act, be the same as those established by the said recited Act for the Trial of Small Debt Causes in Sheriff Courts; and where Decree of Removing is pronounced it shall be in the Form or to the Effect of the said Schedule (A.), and shall have the full Force of a Decree of Removing and Warrant of Ejection; and the Judgments to be pronounced in such summary Actions of Removing shall be final, and not subject to Review either in the Circuit Court of Judiciary or in the Court of Session.

Citation and farther Procedure in Removings to be the same as provided for Small Debt Causes.

Judgments to be final.

*Summary Removings from Premises let for less than a Year; See 16 & 17 V., c. 80, § 29-31. A. of S. 10 July 1839, and 14 Dec. 1766.*

Sheriff may adjourn the Cause.

*Finality.*

Where Defender has found Caution he may give in written Answers to Complaint.

Members of College of Justice not exempt.

Sheriffs Jurisdiction extended in Questions of Nuisance and Servitude.

Agents qualified to practise before Court of Session may practise in Sheriff Courts.

§ XII. And be it enacted, That the Sheriff may, of Consent of Parties, or where the Ends of Justice require it, adjourn the further Hearing of or Procedure in any summary Process of Removing raised under the Authority of this Act, and he may likewise order written Answers to be given in to the Complaint; and all such Orders shall be final, without being subject to Appeal or Advocation: Provided always, that the Sheriff shall in all such Cases where the Defences cannot be instantly verified ordain the Defender to find Caution for violent Profits.

§ XIII. And be it further enacted, That in all Cases where the Defender has found Caution he shall be allowed to give in written Answers to the Complaint; and in all Cases where written Answers shall be ordered such Cases shall thereafter be conducted, as nearly as may be, according to the Forms in use in ordinary Processes of Removing, and the Judgment of the Sheriff therein shall be subject to Review in common Form.

§ XIV. And be it enacted, That no Person shall be exempt from the Jurisdiction of the Sheriff in any Process of Removing raised under the Authority of this Act, on account of Privilege, or being a Member of the College of Justice, or otherwise.

§ XV. And be it enacted, That the Jurisdiction, Power, and Authority of Sheriffs of Scotland shall be and the same are hereby extended to all Actions or Proceedings relative to Questions of Nuisance or Damages arising from the alleged undue Exercise of the Right of Property, and also to Questions touching either the Constitution or the Exercise of real or prædial Servitudes; and all Parties against whom such Actions or Proceedings may be brought shall be amenable to the Jurisdiction of the Sheriff of the Territory within which such Property or Servitude shall be situated.

§ XXXIII. And be it enacted, That it shall be lawful for all Agents duly qualified to practise before the Court of Session to practise as Agents in all Sheriff Courts in all Actions or Proceedings to which the Jurisdiction of the Sheriffs is extended by this Act, and which could not have been competently brought before the Sheriff Courts prior to the passing hereof: Provided always, that they shall not be entitled to Payment of any other or higher Fees than those legally exigible by other Agents before these Courts; and provided also, that all such

Practitioners.

Agents in practising in Sheriff Courts shall be subject to such Orders and Regulations as the Court of Session shall make by Act or Acts of Sederunt in Manner hereinbefore provided.

## 2° &amp; 3° VICTORIÆ REGINÆ.

## CAP. XXXVI.

[See A. of S. 8  
Aug. 1839.]

*An Act to regulate the Duties to be performed by the Judges in the Supreme Courts of Scotland, and to increase the Salaries of certain of the said Judges.*—[29th July 1839.]

11 G. 4, & 1 W. 4,  
c. 69.

2 & 3 W. 4, c. 54.

50 G. 3, c. 51.

WHEREAS an Act was passed in the First Year of the Reign of his late Majesty King William the Fourth, intituled, *An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the judicial Establishments of Scotland*, by which the Jury Court and the Admiralty and Commissary Courts were abolished, and the Jurisdiction and Duties of the said Courts were transferred to the Court of Session, whereof the Number of Judges was reduced from Fifteen to Thirteen: And whereas another Act was passed in the Second and Third Years of the Reign of his said late Majesty, intituled, *An Act for making Provision for the Dispatch of the Business now done by the Court of Exchequer in Scotland*, by which the Jurisdiction and Duties of the Court of Exchequer were transferred to certain Judges of the Court of Session, after the Retirement or Decease of the last remaining Baron of Exchequer, which Event has now happened: And whereas an Act was passed in the Fiftieth Year of the Reign of his Majesty King George the Third, intituled, *An Act for augmenting the Salaries of the Lords of Session, Lords Commissioners of Justiciary, and Barons of Exchequer, in Scotland, and Judges in Ireland*, by which the Salaries of Lords of Session and Lords Commissioners of Justiciary were augmented and regulated: And whereas his said late Majesty, by Commission bearing Date the Sixth Day of August Eighteen hundred and thirty-four, directed Letters Patent to be forthwith made and passed under the Seal appointed by the Treaty of Union to be kept and made use of in place of the Great Seal of Scotland, directing certain Persons therein named to make a diligent and full Inquiry into various Matters relative to the Law and Administration of Justice in Scotland; and in particular,



First, "As to the Arrangements of judicial Business in the Courts of Session and other Courts ;" *Justiciary and Exchequer.*

Secondly, "As to the Execution of the Duties formerly discharged by the Commissary Court, but now transferred by Statute to the Court of Session ;"

Thirdly, "As to the Execution of the Duties formerly discharged by the Admiralty Court, now transferred by Statute to the Court of Session ;" and,

Fourthly, "As to the Execution of the Duties of the Court of Exchequer in *Scotland* ;"

And whereas the Commissioners so appointed have made Reports, which have been laid before Parliament ; and it is expedient to carry into effect certain of the Recommendations contained in the said Reports, and to regulate the Arrangements of judicial Business in the Court of Session, Court of Justiciary, Court of Exchequer, and Court of Commissioners for Teinds, and to increase the Salaries of certain of the Judges of the Court of Session performing the judicial Duties of the said Supreme Courts : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That Judges of the Court of Session in *Scotland* shall be bound, in addition to the Duties at present discharged by them, to perform the Duties of Lords Commissioners of the Court of Justiciary, and of Barons of the Court of Exchequer ; and such Duties shall be distributed among the said Judges, with a view to Equality of Duty, as hereinafter provided.

II. And be it enacted, That the Court of Justiciary shall consist of the Lord Justice General, the Lord Justice Clerk, and Five Judges of the Court of Session, appointed or to be appointed Lords Commissioners of the Court of Justiciary, and the Quorum of the said Court shall remain as at present : Provided always, that it shall be lawful for her Majesty, her Heirs and Successors, to appoint, by special Commission, any other of the Judges of the Court of Session to act as Judges of the Court of Justiciary on Circuits, and in the High Court of Justiciary in Causes which may be certified from Circuit Courts in which such Judges shall have acted.

III. And be it enacted, That after the present Lord Justice Clerk, and the present principal Clerk of Justiciary shall cease to hold their Offices, the Appointment to the Offices of principal and Depute Clerks of the Court of Justiciary, and also of the Circuit Clerks of the said Court, shall, as Vacancies occur, be vested in her Majesty, her

Judges of Court of Session bound to perform the Duties of Justiciary and Exchequer.

Court of Justiciary to consist of certain Judges.

Clerks of Justiciary to be appointed by the Crown.

*Justiciary and Exchequer.*

Two Judges to be appointed to perform the Duties of the Exchequer.

*Rep. by 19 & 20 V., c. 56.*

Judges performing the Duties of the Court of Exchequer, in Cases of Importance to state Questions of Law for Opinion of the other Judges.

*Rep. by 19 & 20 V., c. 56.*

Her Majesty may accept the Resignation of a Judge of Justiciary or Exchequer.

As to the performance of the Business of the Bill Chamber.

*Am. 53 G. 3, c. 64, § 2; 1 & 2 G. 4, c. 58, § 4.*

Heirs and Successors; and all persons to be hereafter appointed to any of the said Offices shall perform the Duties thereof in Person.

IV. And be it enacted, That the Duties of the Court of Exchequer in *Scotland*, and the whole Powers and Duties of the said Court, and of the Chief Baron and Barons thereof, in so far as the Exercise of such Powers and Duties is not otherwise provided for by Parliament, shall be and the same are hereby transferred to the Judges of the Court of Session (not being Lords Commissioners of the Court of Justiciary), Two of whom, as Judges, shall perform the same successively and in Rotation for such equal Periods of Time as shall be fixed by the said whole Judges, and established by Act of Sederunt to that Effect: Provided always, that One of the said Judges may act in the Absence of the other.

V. And be it enacted, That it shall be competent to the Two Judges performing for the Time the Duties of the Court of Exchequer, in any Case which shall appear to them to be of Importance and Difficulty, to state the Questions of Law arising on such Case in Writing, and to require the Opinion of the other Judges liable to perform the said Duties of the Court of Exchequer thereupon; and such other Judges shall communicate their Opinion thereupon, either collectively or individually; and the Judgment to be pronounced in the Cause by the Two officiating Judges shall be in accordance with the Opinion of the Majority of all the Judges so consulting.

VI. And be it enacted, That it shall be lawful for her Majesty, her Heirs and Successors, where it shall appear expedient for the better Administration of Justice, to accept of the Resignation of any of the Judges in the Court of Session who shall have been or may be appointed to perform the Duties of Lords Commissioners of the Court of Justiciary, in so far as regards such Duties in the Court of Justiciary, and to appoint another of the Judges in the Court of Session to perform such Duties: Provided always, that the Judge whose Resignation is so accepted shall be forthwith appointed to perform some of the other Duties hereby assigned to Judges of the Court of Session.

VII. And be it enacted, That the whole Business of the Bill Chamber in the Court of Session falling to be performed during the Spring and Autumn Vacations of the said Court, and during the Christmas Recess, shall be performed, in such Rotation as the Court of Session by Act of Sederunt may fix, by the remaining Six Judges of the Court of Session who shall not be Judges in the Court of Justiciary, with Power to all the Judges of the Court of Session in

case of Indisposition or of Absence of any of the said Six Judges, to act for him.

*Teind Court.  
Sittings of Court.*

Teind Court regulated.

VIII. And be it enacted, That the Judges of the Two Divisions of the Inner House of the Court of Session, along with the Lord Ordinary who shall be Judge in Teind Causes and Proceedings for the Time being, shall be Lords Commissioners for Teinds, and shall constitute the Court of Commissioners for Teinds, and any Five of the said Judges shall be a Quorum of the said Court; and it shall be competent to the said Court, in Causes which they may deem to be of Importance or Difficulty, to order that such Causes shall be heard before the whole Judges of the Court of Session, and to obtain their Opinions, in like Manner as is provided in ordinary Causes depending in either Division of the Court of Session.

IX. And be it enacted, That the Sittings of the Court of Session shall be regulated as follows; the Sittings of the whole Court, both Inner and Outer Houses, for the Summer Session, excepting the Summer Session of this present Year, which shall meet and terminate as heretofore, shall commence on the first lawful Day (*Monday* excepted) which shall happen next after the Nineteenth Day of *May* yearly, and shall terminate on the Twentieth Day of *July* yearly, or on the *Saturday* immediately preceding the said Twentieth Day of *July* when the same shall happen to fall upon *Sunday* or *Monday*; the Sittings of the Two Divisions of the Inner House for the Winter Session shall commence and terminate as at present; and the Sittings of the Lords Ordinary in the Outer House for the Winter Session shall commence on the first lawful Day (*Monday* excepted) which shall happen next after the Thirty-first Day of *October* yearly, and shall terminate on the Twentieth day of *March* yearly, or on the *Saturday* immediately preceding the said Twentieth Day of *March* when the same shall happen to fall upon a *Sunday* or *Monday*: Provided always, that at the Sittings of the Court of Session for Trial of Civil Causes by Jury, before and after the ordinary Sessions of the said Court, the Lords Ordinary shall assist, when required, in the said Jury Trials, and also at the Criminal Trials held before and after the ordinary Sessions of the Court where they are Judges of Justiciary.

Sittings of the Court of Session and of the Lords Ordinary regulated.

*Ext. by 20 & 21 V c. 56, § 9.*

*Infra, § 10, 11.*

X. And be it enacted, That it shall be lawful for the said Court of Session, and they are hereby authorized and empowered, if there shall be Arrears of Business in the said Court, or as the State of Business otherwise may require, from Time to Time to direct, by Act or Acts of Sederunt, that the Winter and Summer Sessions of the Court of Session or either of them shall be extended, and to specify the

Court of Session to have Power to extend the Sittings.

*Am. 1 W. 4, c. 69, § 10.*

*Infra, § 11.*

*Other Officers of  
Court, etc.*

Minute Book, how  
to be printed.

*Rep. A. of S. 11*  
March 1789.

Collector and Ac-  
countant of the  
Fee Fund.

Auditor to be paid  
by Salary.

*See A. of S. 6 Feb.*  
1806, *establishing*  
*Audit.*

Macera.

Teind Clerks.

Teind Clerks, Ex-  
tracts, Accounts,  
etc.

XXII. And be it enacted, That the Minute Book of the Court of Session and Teind Court, the Record of Edictal Citations, the weekly Calling List of Causes, and the weekly printed Roll of Outer House and Teind Causes, shall be printed by the respective Keepers thereof, and shall be sold to the Public at the lowest Rate which will defray the necessary Expense of printing the same, and such Keepers shall annually exhibit an Account thereof to the Auditor of Court, who is authorized to examine and audit the same: Provided always, that the said Court may regulate the Mode of such Sale, and by whom the same shall be made, and the Proceeds thereof accounted for; and in case such Sale shall be insufficient to defray the Expense of Printing, the Balance shall be paid out of the Fee Fund.

XXIII. And be it enacted, That the Salary and Emoluments of the Collector of the Fee Fund shall not exceed Four hundred Pounds per annum, paid in the same Manner as the present Salary and Emoluments are paid; and upon any Vacancy hereafter occurring in the said Office his Successor shall be appointed by her Majesty, her Heirs and Successors; and the Salary of the present Accountant of the Fee Fund, while he shall hold the said Office, shall be One hundred Pounds: Provided always, that the Offices of the said Collector and Accountant of the Fee Fund may be abolished by any Act to be passed during the present Session of Parliament, or to be hereafter passed, and their Duties transferred to other Persons.

XXIV. And be it enacted, That the Auditor of Accounts in the said Court, instead of being paid by Fees, shall receive a fixed Salary of Seven hundred Pounds per annum, with the Accommodation of Office Room, or such a reasonable Allowance for the same as the said Court shall direct.

XXV. And be it enacted, That as Vacancies occur the Salaries allowed to each of the Macers of Court shall be limited to One hundred Pounds per annum.

XXVI. And be it enacted, That the Office of the principal Clerk of the Commissioners for Teinds shall be and the same is hereby abolished, and the Business heretofore discharged by the Teind Clerks shall be in future discharged by the present First and Second Depute Clerks of Teinds and their Successors in Office, the said present First Clerk being hereafter to be named the Clerk of Teinds, and the said present Second Clerk being hereafter to be named the Depute Clerk of Teinds; and upon the Death, Resignation, or Removal of the said Clerk or Depute Clerk their Successors shall be appointed by her Majesty, her Heirs and Successors; and the Salary of the Clerk of Teinds shall be Three hundred Pounds per annum, and the Salary of the Depute Clerk shall be Two hundred and fifty Pounds per annum, besides the Emoluments respectively allowed to such Clerk and Depute Clerk by this Act: Provided always, that it shall be lawful for her Majesty, her Heirs and Successors, from and after the passing of this Act to appoint a fit Person to be Keeper of the Records in the Teind Office, with an Allowance not exceeding One hundred Pounds per annum, in case it shall be judged expedient to make such Appointment; and it shall be the Duty of such Keeper to arrange and index the Records and Processes in the Teind Office, so as to render them useful and accessible to the Public, and to perform such other Duties in the said Office as may be directed in his Commission, or by the Court of Session in virtue of the Powers herein given.

XXVII. And be it enacted, That the Provisions and Regulations for abridging the Form of extracting Decrees of the Court of Session contained in the said recited Act of the Fiftieth Year of the Reign of his Majesty King George the Third and in this Act shall be and the same are hereby extended and applied to Extracts of Acts and Decrees

pronounced by the Court of Commissioners for Teinds, except in Processes of Valuation of Teinds and other Cases where full Extracts may be required by the Parties; and the Provisions and Regulations which are or may be applicable to auditing of Accounts of Expenses in the Court of Session by the Auditor of the Court shall be and the same are hereby extended and applied to Accounts of Expenses in the Court of Commissioners for Teinds, which shall be subject to be audited and taxed by the said Auditor in like Manner as Accounts of Expenses in the Court of Session; and the Business of the Teind Office shall in other respects continue as at present: Provided always, that in those Cases in which the Clerk of Teinds may be appointed by Remit from the Court or Lord Ordinary, or may be employed by any Party or Parties in a Cause, to act as an Accountant, or in the Preparation of States, Schemes, or Calculations for regulating or adjusting the Rights of Parties, the Charges to be made by the Clerk of Teinds shall be regulated according to the Time and Labour in each particular Case, but subject to the Review and Taxation of the Auditor of the Court of Session in like Manner as Accounts of Expenses; and the Emoluments arising from such Remits to or Employment of and Charges by the said Clerk of Teinds shall belong to such Clerk of Teinds: Provided further, that it shall be competent to the Court or Lord Ordinary, wherever it shall appear necessary for the due Dispatch of Business, to make such Remits to act as aforesaid to any other properly qualified Person, and that it shall be competent to the Parties, by mutual Agreement, to employ any Person whom they shall think proper to act as aforesaid, except in the Preparation of Schemes of Locality: Provided also, that the said Depute Clerk of Teinds shall continue to discharge the Duty of extracting Acts and Decrees pronounced by the Court of Commissioners for Teinds, and shall receive Payment for preparing the same at the Rate of Sixpence for each Page of One hundred and fifty Words, and One Shilling for each Page of States or Schemes in Figures, without any further Charge for Printing or Stationery, the Party ordering the First Extract paying as aforesaid for each Page both of the Copy given out and of the Record Copy.

XXVIII. And be it enacted, That the Fees contained in the Schedule annexed to this Act, along with the Fees presently payable upon Extracts of Deeds recorded in the Books of Council and Session, shall hereafter be paid into the Fee Fund of the Court of Session; and all other Fees, Dues, and Perquisites payable to the Clerks or Officers of Court, or of the Commissioners for Teinds, are and shall be abolished, under the Exceptions hereinbefore made; and the Salaries and Allowances made and provided by this Act shall be payable quarterly, free of all Deductions, out of the said Fee Fund, under the Provisions, in case of Insufficiency of the said Fund, contained in the said Act of the Fiftieth Year of the Reign of his Majesty King George the Third.

XXIX. And be it enacted, That Summonses in Admiralty Causes may be raised and pass under the Signet in like Manner as other Summonses before the Court of Session now do.

XXX. And be it enacted, That if any Clerk, Extractor, or other Officer of Court shall neglect his Duty, or shall be guilty of any Malversation in Office, or shall exact or receive any Fees or Perquisites other than those due to him in virtue of his Office or contrary to Law, it shall be competent for the Court of Session, on such Charge or Charges being proved in any summary Application by Petition and Complaint at the Instance of the Party or Parties aggrieved, or of her Majesty's Advocate for the Time being, to pronounce such Judgment as in the Circumstances of the Case may seem just, not exceeding Deprivation of Office and Expenses of the Proceedings, besides the Repayment of any such Fees or Perquisites unduly received, which shall

*Admiralty.  
Miscellaneous.*

The Fee Fund.

Admiralty Summonses.  
*Am. 1 W. 4, c. 69,  
§ 21.*

Officers of Court may be summarily removed for Malversation.

*See 12 & 18 V., c. 51, § 21.*

*Double and Treble  
Costs.*

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5° & 6° VICTORIÆ REGINÆ.

CAP. XCVII.

[See Table I., p. 87, of Public General Acts to which this Act applies.]

*An Act to amend the Law relating to Double Costs, Notices of Action, Limitations of Actions, and Pleas of the General Issue, under certain Acts of Parliament.*—[10th August 1842.]

WHEREAS divers Acts of Parliament, public, local, and personal, contain Enactments or Provisions relating to the Recovery of double, treble, or other Costs in certain Cases, and to the pleading of the General Issue and the giving any special Matter in Evidence at any Trial to be had for any Matter done in pursuance of or under the Authority of the said Acts, and to the giving of Notice of Action before any Action shall be commenced: And whereas it is expedient that the Law should be altered in such respects: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That so much of any Clause, Enactment, or Provision in any Act or Acts commonly called public local and personal, or local and personal, or in any Act or Acts of a local or personal Nature, whereby it is enacted or provided that either double or treble Costs, or any other than the usual Costs between Party and Party, shall or may be recovered, shall be and the same are hereby repealed: Provided always, that in lieu thereof the usual Costs between Party and Party shall and may be recovered, and no more.

Repeal of Provision in local and personal Acts giving double and treble Costs.

*Ext. Infra*, § 2.

Repealing Provision in public Acts giving double and treble Costs.

*Supra*, § 1.

II. And be it enacted, That so much of any Clause, Enactment, or Provision in any public Act or Acts, not local or personal, whereby it is enacted or provided that either double or treble Costs, or any other than the usual Costs between Party and Party, shall or may be recovered, shall be and the same are hereby repealed: Provided always, that instead of such Costs the Party or Parties heretofore entitled under such last-mentioned Acts to such double, treble, or other Costs shall receive such full and reasonable Indemnity as to all Costs, Charges, and Expenses incurred in and about any Action, Suit, or other legal Proceeding, as shall be taxed by the proper Officer in that Behalf, subject to be reviewed in like Manner and by the same Authority as any other Taxation of Costs by such Officer.

Repeal of Provision in local and personal Acts

III. And be it enacted, That so much of any Clause or Provision in any Act or Acts commonly called public local

and personal, or local and personal, or in any Act or Acts of a local and personal Nature, whereby any Party or Parties are entitled or permitted to plead the General Issue only and to give any special Matter in Evidence without specially pleading the same, shall be and the same is hereby repealed.

*Notice of Action.  
Limitation.*

allowing General  
Issue.

IV. And whereas it is expedient that the Law should be uniform with respect to Notice of Action in all Cases where such Notice of Action is required; be it therefore enacted, That from and after the passing of this Act, in all Cases where Notice of Action is required, such Notice shall be given One Calendar Month at least before any Action shall be commenced; and such Notice of Action shall be sufficient, any Act or Acts to the contrary thereof notwithstanding.

Uniformity of  
Notice of Action.

*Am. 24 G. 2, c. 44;  
and see Table I.*

V. And whereas divers Acts commonly called public local and personal, or local and personal Acts, and divers other Acts of a local and personal Nature, contain Clauses limiting the Time within which Actions may be brought for anything done in pursuance of the said Acts respectively: And whereas the Periods of such Limitations vary very much, and it is expedient that there should be One Period of Limitation only; be it therefore enacted, That from and after the passing of this Act the Period within which any Action may be brought for anything done under the Authority or in pursuance of any such Act or Acts shall be Two Years, or in case of continuing Damage, then within One Year after such Damage shall have ceased; and that so much of any Clause, Provision, or Enactment by which any other Time or Period of Limitation is appointed or enacted shall be and the same is hereby repealed.

General Limita-  
tion of Actions  
under local and  
personal Acts.

*See Table I.*

VI. Provided always, and be it enacted, That nothing herein contained shall extend or be construed to extend to any Action, Bill, Complaint, or Information, or any legal Proceeding of any Kind whatsoever, commenced before the passing of this Act, but such Proceedings may be thereupon had and taken in all respects as if this Act had not passed.

Act not to extend  
to Actions, etc.,  
brought before  
passing of this Act.

*Enforcement of  
Calls.*

## 8° VICTORIÆ REGINÆ.

## CAP. XVII.

["The Companies  
Clauses Consoli-  
dation (Scotland)  
Act, 1845." See 8  
V., c. 19, and 28 &  
24 V., c. 106.]

*An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature in Scotland.—[8th May 1845.]*

§ XI. Certificates of Shares to be issued to the Shareholders.—XII. Certificate to be Evidence.—XIII. Certificate to be renewed when destroyed.

§ XXII. Subscriptions to be paid when called for.—XXIII. Power to make Calls.—XXIV. Interest to be paid on Calls unpaid.—XXV. Power to allow Interest on Payment of Subscriptions before Call.

Enforcement of  
Calls by Action.

§ XXVI. If at the Time appointed by the Company for the Payment of any Call any Shareholder fail to pay the Amount of such Call, it shall be lawful for the Company to sue such Shareholder for the Amount thereof in any Court of Law or Equity having competent Jurisdiction, and to recover the same, with lawful Interest from the Day on which such Call was payable.

Averment in Ac-  
tion for Calls.

§ XXVII. In any Action or Suit to be brought by the Company against any Shareholder to recover any Money due for any Call it shall not be necessary to set forth the special Matter, but it shall be sufficient for the Company to aver that the Defender is the Holder of One Share or more in the Company (stating the Number of Shares), and is indebted to the Company in the Sum of Money to which the Calls in Arrear shall amount in respect of One Call or more upon One Share or more (stating the Number and Amount of each of such Calls), whereby an Action hath accrued to the Company by virtue of this and the special Act.

Matter to be  
proved in Action  
for Calls.

§ XXVIII. On the Trial or Hearing of such Action or Suit it shall be sufficient to prove that the Defender at the Time of making such Call was a Holder of One Share or more in the Undertaking, and that such Call was in fact made, and such Notice thereof given as is directed by this or the special Act; and it shall not be necessary to prove the Appointment of the Directors who made such Call, nor any other Matter whatsoever; and thereupon the Company shall be entitled to recover what shall be due upon such Call, with Interest thereon, unless it shall appear either that any such Call exceeds the prescribed Amount, or that due Notice of such Call was not given, or that the prescribed Interval between Two successive Calls had not elapsed, or that Calls amounting to more than the Sum prescribed for the total Amount of Calls in One Year had been made within that Period.

Proof of Pro-  
prietorship.

§ XXIX. The Production of the Register of Shareholders shall be *prima facie* Evidence of such Defender being a Shareholder, and of the Number and Amount of his Shares.

*Execution against  
Shareholders.*

Execution against  
Shareholders to  
the Extent of their  
Shares in Capital  
not paid up.  
See 1 & 2 V., c.  
114.

§ XXXVIII. If any legal Diligence or Execution shall have been issued against the Property or Effects of the Company, and if there cannot be found sufficient whereon to levy under such Diligence or Execution, then such Diligence or Execution may be used against any of the Shareholders to the Extent of their Shares respectively in the Capital of the Company not then paid up; and for the Purpose of ascertaining the Names of the Shareholders, and the Amount of Capital remaining to be paid upon their respective Shares, it shall be lawful



for any Person entitled to any such Execution, at all reasonable Times, to inspect the Register of Shareholders without Fee.

§ XXXIX. If by Means of any such Diligence or Execution any Shareholder shall have paid any Sum of Money beyond the Amount then due from him in respect of Calls, he shall forthwith be reimbursed such additional Sum by the Directors out of the Funds of the Company.

§ LVI. Where by the special Act the Mortgagees of the Company shall be empowered to enforce the Payment of the Arrear of Interest, or the Arrears of Principal and Interest, due on such Mortgages, by the Appointment of a Judicial Factor, then, if within Thirty Days after the Interest accruing upon any such Mortgage or Bond has become payable, and after Demand thereof in Writing, the same be not paid, the Mortgagee may, without Prejudice to his Right to sue for the Interest so in Arrear in any competent Court, require the Appointment of a Judicial Factor, by an Application to be made as hereinafter provided; and if within Six Months after the principal Money owing upon any such Mortgage or Bond has become payable, and after Demand thereof in Writing, the same be not paid, the Mortgagee, without Prejudice to his Right to sue for such principal Money, together with all Arrears of Interest, in any competent Court, may, if his Debt amount to the prescribed Sum alone, or if his Debt does not amount to the prescribed Sum, he may, in conjunction with other Mortgagees, whose Debts, being so in Arrear, after Demand as aforesaid, shall, together with his, amount to the prescribed Sum, require the Appointment of a Judicial Factor, by an Application to be made as hereinafter provided.

§ LVII. Every Application for a Judicial Factor in the Cases aforesaid shall be made to the Court of Session, and on any such Application so made, and after hearing the Parties, it shall be lawful for the said Court, by Order in Writing, to appoint some Person to receive the whole or a competent Part of the Tolls or Sums liable to the Payment of such Interest, or such Principal and Interest, as the Case may be, until such Interest, or until such Principal and Interest, as the Case may be, together with all Costs, including the Charges of receiving the Tolls or Sums aforesaid, be fully paid; and upon such Appointment being made, all such Tolls and Sums of Money as aforesaid shall be paid to and received by the Person so to be appointed; and the Money so to be received shall be so much Money received by or to the Use of the Party to whom such Interest, or such Principal and Interest, as the Case may be, shall be then due, and on whose Behalf such Judicial Factor shall have been appointed; and after such Interest and Costs, or such Principal, Interest, and Costs, have been so received, the Power of such Judicial Factor shall cease, and he shall be bound to account to the Company for his Intromissions, or the Sums received by him, and to pay over to their Treasurer any Balance that may be in his Hands.

§ CI. Proceedings to be entered in a Book, and to be Evidence.

§ CXXXI. Appointment of Arbitrators when Questions are to be determined by Arbitration.—CXXXII. Vacancy of Arbitrator to be supplied.—CXXXIII. Appointment of Umpire.

§ CXXXIV. If in either of the Cases aforesaid the said Arbitrators shall refuse, or shall for Seven Days after Request of either Party to such Arbitration neglect to appoint an Umpire, it shall be lawful for the Lord Ordinary, on the Application of either Party to such Arbitration, to appoint an Umpire; and the Decision of such Umpire on the Matters on which the Arbitrators shall differ shall be final.

§ CXXXV. The said Arbitrators, or their Umpire, may call for the Production of any Documents in the Possession or Power of either

*Judicial Factor.  
Arbitration.*

Reimbursement of  
such Shareholders.

*Power to borrow  
Money.*

Arrears of Interest,  
when to be enforced by appointment of a Judicial Factor.

*See 20 & 21 V., c.  
56, § 4.*

Arrears of Principal and Interest.

Appointment of  
Judicial Factor.

*Arbitration.*

[Lord Ordinary  
empowered to appoint an Umpire,  
on Neglect of the  
Arbitrators.]

Power of Arbitrator to call for  
Books, etc.

Legal Proceedings.

[By § 3, "Lord Ordinary" is to mean, the Lord Ordinary officiating on the Bills in Session or Vacation.]

Costs to be in the Discretion of the Arbitrators.

Service of Notices upon Company.  
*Am. 6 G. 4, c. 120, § 51.*

*See 8 V., c. 19, § 128; 19 & 20 V., c. 47, § 53.*

Tender of Amends.

Distress, etc., not unlawful for Want of Form.

Proceedings not to be quashed for Want of Form, nor removed by Suspension.

Party which they or he may think necessary for determining the Question in dispute, and may examine the Parties or their Witnesses on Oath, and administer the Oaths necessary for that Purpose, and may also grant Diligence for the Recovery of such Documents as either Party may require, or for citing Witnesses; and, on Application to the Lord Ordinary, Letters of Supplement, or such other Writ as may be necessary, shall be issued by the Lord Ordinary, in support of such Diligence.

§ CXXXVI. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the Costs of and attending every such Arbitration to be determined by the Arbitrators shall be in the Discretion of the Arbitrators or the Umpire, as the Case may be.

§ CXXXVII. Any Summons or Notice, or any Writ, or other Proceeding, at Law or in Equity, requiring to be served upon the Company, may be served by the same being left at or transmitted through the Post directed to the principal Office of the Company, or One of their principal Offices where there shall be more than One, or being given personally to the Secretary, or in Case there be no Secretary then by being given to any One Director of the Company.

§ CXXXVIII. Service by Company on Shareholders.—CXXXIX. Notices to joint Proprietors of Shares.—CXL. Notice by Advertisement.—CXLI. Authentication of Notices.—CXLII. Proof of Debts in Bankruptcy.

§ CXLIII. And be it enacted, That if any Party shall have committed any Irregularity, Trespass, or other wrongful Proceeding in the Execution of this or the special Act, or by virtue of any Power or Authority thereby given, and if, before Action brought in respect thereof, such Party make Tender of sufficient Amends to the Party injured, such last-mentioned Party shall not recover in any such Action; and if no such Tender shall have been made, it shall be lawful for the Defender, by Leave of the Court where such Action shall be pending, at any Time before the Record is closed, to pay into Court such Sum of Money as he shall think fit; and thereupon such Proceedings shall be had as in other Cases where Defenders are allowed to pay Money into Court.

§ CXLIV. Provision for Damages not otherwise provided for.—CXLV. Distress, etc., against the Treasurer.—CXLVI. Method of proceeding before the Sheriff or Justices in Questions of Damages, etc.—CXLVII. Publication of Penalties.—CXLVIII. Penalty for defacing Boards used for such Publication.—CXLIX. Penalties to be summarily recorded before the Sheriff or Two Justices.—CL. Penalties to be levied by Distress.—CLI. Imprisonment in default of Distress.—CLII. Distress, etc., how to be levied.

§ CLIII. No Pounding and Sale made by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any Party making the same be deemed a Trespasser or Wrongdoer, on account of any Defect or Want of Form in the Summons, Conviction, Warrant, or other Proceeding relating thereto; but all Persons aggrieved by such Defect or Irregularity may recover full Satisfaction for the special Damage in an Action before the Sheriff Court.

§ CLXI. No Proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for Want of Form, nor shall the same be removed by Suspension or otherwise into any Superior Court.

## 8° VICTORIÆ REGINÆ.

*Arbitration. Com-  
pensation.*

## CAP. XIX.\*

*An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature in Scotland.*—[8th May 1845.]

[The Lands  
Clauses Consolidation (Scotland) Act, 1845.  
Amended by 28 & 24 V., c. 106. See also 8 V., c. 17.]

§ XXIV. Appointment of Arbiters when Questions are to be determined by Arbitration.—XXV. Vacancy of Arbitrer to be supplied.—XXVI. Appointment of Oversman.

§ XXVII. If in either of the Cases aforesaid the said Arbiters shall refuse, or shall, for Seven Days after Request of either Party to such Arbitration, neglect to appoint an Oversman, it shall be lawful for the Lord Ordinary, on the Application of either Party to such Arbitration, to appoint an Oversman, and the Decision of such Oversman on the Matters on which the Arbiters shall differ, or which shall be referred to him under this or the special Act, shall be final.

Lord Ordinary empowered to appoint an Oversman on Neglect of the Arbiters.

§ XXVIII. In case of Death of single Arbitrer, the Matter to begin de novo.—XXIX. If either Arbitrer refuse to act, the other to proceed ex parte.—XXX. If Arbiters fail to make their Award within Twenty-one Days, the Matter to go to the Umpire.—XXXI. Power of Arbiters to call for Books, etc.—XXXII. Costs of Arbitration, how to be borne.—XXXIII. Award to be delivered to the Promoters of the Undertaking.—XXXIV. Award not to be set aside for Error in Form.

And with respect to the Purchase Money or Compensation coming to Parties having limited Interests, or prevented from treating, or not making Title, be it enacted as follows:

*Application of  
Compensation.*

§ LXVII. The Purchase Money or Compensation which shall be payable in respect of any Lands, or any Interest therein, purchased or taken by the Promoters of the Undertaking from any Corporation, Heir of Entail, Liferenter, married Woman seized in her own Right or entitled to Terce or Dower, or any other Right or Interest, Husband, Tutors, Curators, or other Guardians for any Infant, Minor, Lunatic, or Idiot, fatuous or furious Person, or for any Person under any other Disability or Incapacity, Judicial Factor, Trustee, Executor, or Administrator, or Person having a partial or qualified Interest only in such Lands, and not entitled to sell or convey the same, except under the

Purchase Money payable to Parties under Disability, amounting to L.200, to be deposited in the Bank.

\* Table of Public General Acts with which the Provisions of the Lands Clauses Consolidation (Scotland) Acts, 1845 and 1860, are incorporated.

| Statute.           | Subject Matter.                               | Incorporating Clause. |
|--------------------|-----------------------------------------------|-----------------------|
| 10 V., c. 14       | Markets and Fairs Clauses Act, . . .          | 6                     |
| 10 V., c. 17       | Water Works Clauses Act, . . .                | 6, 85                 |
| 10 V., c. 27       | Harbours, Docks, and Piers Clauses Act, . . . | 6, 92                 |
| 10 & 11 V., c. 113 | Drainage of Land (Scotland), . . .            | 13                    |
| 14 & 15 V., c. 27  | Prisons Act Amendment, . . .                  | 8                     |
| 16 & 17 V., c. 93  | Burgh Harbours (Scotland) Act, . . .          | 4                     |
| 17 & 18 V., c. 64  | Public Libraries (Scotland) Act, . . .        | 13                    |
| 18 & 19 V., c. 68  | Burial Grounds (Scotland) Act, . . .          | 13                    |
| 18 & 19 V., c. 88  | Dwelling Houses, etc. (Scotland) Act, . . .   | 25                    |
| 23 & 24 V., c. 112 | Defence of the Realm, . . .                   | 29                    |
| 23 & 24 V., c. 146 | Rifle Volunteer Corps, . . .                  | 9                     |

*Compensation  
Clauses.*

Provisions of this or the special Act, or the Compensation to be paid for any permanent Damage to any such Lands, shall, if it amount to or exceed the Sum of Two hundred Pounds, the same shall be paid into the Bank, to the Intent that such Monies shall be applied, under the Authority of the Court of Session, to some One or more of the following Purposes; (that is to say,)

*Application of  
Monies deposited.*

In the Purchase or Redemption of the Land Tax, or the Discharge of any Debt or Incumbrance affecting the Land in respect of which such Money shall have been paid, or affecting other Lands settled therewith on the same Heirs, or for the same Trusts or Purposes, or affecting succeeding Heirs of Entail in any such Lands, whether imposed and constituted by the Entailer, or in virtue of Powers given by the Entail, or in virtue of Powers conferred by any Act of Parliament;

In the Purchase of other Lands to be conveyed, limited, and settled upon the same Heirs, and the like Trusts and Purposes, and in the same Manner, as the Lands in respect of which such Money shall have been paid stood settled; or

If such Monies shall be paid in respect of any Buildings taken under the Authority of this or the special Act, or injured by the Proximity of the Works, or in removing or replacing such Buildings, or substituting others in their Stead, in such Manner as the said Court shall direct; or

In Payment to any Party becoming absolutely entitled to such Money.

*Ext. by 16 & 17 V.,  
c. 94, § 14.  
See 20 & 21 V.,  
c. 56, § 4.*

§ LXVIII. Order for Application, and Investment meanwhile.—  
LXIX. Sums from L.20 to L.200 to be deposited, or paid to Trustees.—  
LXX. Sums not exceeding L.20 to be paid to Parties.—LXXI. All Sums payable under Contract with Persons not absolutely entitled to be paid into the Bank.—LXXII. Court of Session may direct Application of Money in respect of Leases or Reversions as they may think just.—LXXIII. On the Purchase of Lands to be entailed, not necessary to insert the Provisions verbatim.—LXXIV. Upon Deposit being made, the Owners of the Lands to convey, or in default the Lands to vest in the Promoters of the Undertaking, upon a notarial Instrument being executed.—LXXV. Where Parties refuse to convey, or do not show Title, or cannot be found, the Purchase Money to be deposited.—LXXVI. Upon Deposit being made, a Receipt to be given, and the Lands to vest, upon a notarial Instrument being executed.—LXXVII. Application of Monies so deposited.—LXXVIII. Party in Possession to be deemed to be the Owner.

*Expenses in Cases  
of Money de-  
posited.*

LXXIX. In all Cases of Monies deposited in the Bank under the Provisions of this or the special Act, or any Act incorporated therewith, except where such Monies shall have been so deposited by reason of the wilful Refusal of any Party entitled thereto to receive the same, or to feu or convey the Lands in respect whereof the same shall be payable, or by reason of his Refusal or Inability to discharge or obtain a Discharge of any Burden on such Lands which was not specially excepted from Discharge, or by reason of the Failure or Neglect of any Party to make out a good Title to the Land required, it shall be lawful for the Court of Session to order the Expenses of the following Matters, including therein all reasonable Charges and Expenses incident thereto, to be paid by the Promoters of the Undertaking; (that is to say,) the Expense of the Purchase or taking of the Lands, or which shall have been incurred in consequence thereof, other than such Expenses as are herein otherwise provided for, and the Expense of the Investment of such Monies in Government or real Securities, and of the Re-investment thereof in the Purchase of other Lands, and

of re-entailing any of such Lands, and incident thereto, and also the Expense of obtaining the proper Orders for any of the Purposes aforesaid, and of the Orders for the Payment of the Dividends and Interest of the Securities upon which such Monies shall be invested, and for the Payment of the Principal of such Monies, or of the Securities whereon the same shall be invested, and of all Proceedings relating thereto, except such as are occasioned by Litigation between adverse Claimants: Provided always, that the Expense of One Application only for Re-investment in Land shall be allowed, unless it shall appear to the Court of Session that it is for the Benefit of the Parties interested in the said Monies that the same should be invested in the Purchase of Lands in different Sums and at different Times, in which Case it shall be lawful for the Court, if it think fit, to order the Expenses of any such Investments to be paid by the Promoters of the Undertaking.

§ LXXXIII. Payment of Price to be made previous to Entry, except to Survey, etc.—LXXXIV. Promoters to be allowed to enter on Lands before Purchase, on making Deposit by way of Security and giving Bond.—LXXXV. Deposit to be paid into Bank, and Cashier to give a Receipt.

§ LXXXVI. The Money so deposited as last aforesaid shall remain in the Bank by way of Security to the Parties whose Lands shall so have been entered upon for the Performance of the Bond to be given by the Promoters of the Undertaking, as hereinbefore mentioned, and the same may, on the Application by Petition of the Promoters of the Undertaking, be ordered to be invested in the public Funds or upon heritable Securities, and accumulated; and upon the Conditions of such Bond being fully performed it shall be lawful for the Court of Session, upon a like Application, to order the Money so deposited, or the Funds in which the same shall have been invested, together with the Accumulation thereof, to be repaid or transferred to the Promoters of the Undertaking, or, if such Conditions shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such Manner as it shall think fit for the Benefit of the Parties for whose Security the same shall so have been deposited.

§ LXXXVII. Penalty on the Promoters of the Undertaking entering upon Lands without Consent, before Payment of the Purchase Money. [After Conviction, Action may be brought in any competent Court.]—LXXXVIII. Decision of Sheriff not conclusive as to the Right of the Promoters.—LXXXIX. Proceedings in case of Refusal to deliver Possession of Lands.

§ CXXVIII. Any Summons or Notice, or any Writ or other Proceeding at Law or Equity required to be served upon the Promoters of the Undertaking, may be served by the same being left at or transmitted through the Post, directed to the principal Office of the Promoters of the Undertaking, or One of the principal Offices where there shall be more than One, or being given personally, or transmitted through the Post, directed to the Secretary, or in case there be no Secretary then by being given to the Solicitor of the said Promoters.

§ CXXIX. And be it enacted, That if any Party shall have committed any Irregularity, Trespass, or other wrongful Proceeding in the Execution of this or the special Act, or any Act incorporated therewith, or by virtue of any Power or Authority thereby given, and if, before Action brought in respect thereof, such Party make Tender of sufficient Amends to the Party injured, such last-mentioned Party shall not recover in any such Action; and if no such Tender shall have been made, it shall be lawful for the Defender, by Leave of the Court where such Action shall be pending, at any Time before the Record is closed, to pay into Court such Sum of Money as he shall think fit,

#### Legal Proceedings.

#### Entry on Lands.

Deposit to remain as a Security, and to be applied under the Direction of the Court.

Service of Notices upon the Promoters of the Undertaking.

Am. 6 G. 4, c. 120, § 61.

Sec 8 V., c. 17, § 137.

Tender of Amends.

*Execution.*

Poinding not unlawful for Want of Form.

Proceedings not to be quashed for Want of Form, etc.

and thereupon such Proceedings shall be had as in other Cases where Defenders are allowed to pay Money into Court.

§ CXXXIV. No Poinding and Sale made by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any Party making the same be deemed a Trespasser or Wrongdoer, on account of any Defect or Want of Form in the Summons, Conviction, Warrant, or other Proceeding relating thereto, but all Persons aggrieved by such Defect or Irregularity may recover full Satisfaction for the special Damage in an Action before the Sheriff Court.

§ CXXXVIII. No Proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for Want of Form, nor shall the same be removed by Suspension or otherwise into any Superior Court.

## 10° &amp; 11° VICTORIÆ REGINÆ.

## CAP. XLVII.

[Service of Heirs Act, 1847.]

*An Act to amend the Law and Practice in Scotland as to the Service of Heirs.*—[25th June 1847.]

See A. of S. 14  
July 1847; 17  
Nov. 1849.

§ I. From 15th November 1847, the Practice of issuing Brieves from Chancery for Service of Heirs to cease.—II. Services to proceed by Petition to the Sheriff.—III. Petition to be presented to the Sheriff of the County, or to the Sheriff of Chancery.—IV. Nature and Form of the Petition.—V. Conditions of Entail and other Conditions may be referred to instead of being inserted at length.—VI. Burdens, Conditions, and Limitations may be referred to.—VII. Services not to proceed till Publication be made.—VIII. Caveats to be received.—IX. Petition of Service to be equivalent to a Brieve and Claim.—X. Procedure before the Sheriff, and the Effect of his Judgment.—XI. Competing Petition may be presented, and Sheriff, after receiving Evidence, give Judgment.—XII. Recording and Extract of Judgment.—XIII. The Extract Decree to be equivalent to an Extract Retour.—XIV. Transmission of Records.—XV. Clerks of Chancery to be remunerated for keeping Register, etc., by Act of Sederunt.—XVI. No Person entitled to oppose a Service who could not appear against a Brieve of Inquest.

Proceedings may be advocated for Jury Trial.

§ XVII. That in all Cases in which there are competing Petitions conjoined as aforesaid, or in which any Person has competently appeared to oppose any Petition of Service presented to the Sheriff in Terms of this Act, it shall be competent to such of the Parties as may conceive the Case proper to be disposed of by Jury Trial, at any Time before the Proof is begun to be taken by the Sheriff, in Manner before provided, to present a Note of Advocation to the Court of Session, praying the Court to advocate the Proceedings in order that the Case may be tried by a Jury, which Note of Advocation shall be proceeded with in like Manner with Notes of Advocation presented with a view to Jury Trial against Judgments of the Sheriff Courts of Scotland according to the existing Practice, and such Judgment shall be pronounced on the said Note of Advocation as shall be just; and in the event of its appearing proper that the Case should be tried by a Jury, the Lord President of either of the Two Divisions of the said Court, or such other of the Lords of Session as the Court may appoint, or as

may be arranged by the Lord President of the Division shall be the Judge at the Trial, and preside thereat in like Manner as is done according to the existing Practice in Trials by Jury, and the Jury shall be chosen and summoned in like Manner as on such Trials; and the Verdict to be returned by the Jury shall be equally final and conclusive with the Verdicts at present returned in Trials by Jury in the said Court, but with all and the like Remedies by Bill of Exceptions, Motion for new Trial, or otherwise at present competent: Provided always, that in every Case in which the Jury shall find a Verdict in favour of a Party petitioning to be served, the Court shall, at the same Time with applying such Verdict, remit to the Sheriff from whom the Case was advocated, with Instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may thereafter be extracted, and the Extract thereof recorded and given out in Manner and to the Effect before provided.

§ XVIII. That in every Case in which the Sheriff has refused to serve a Petitioner, or dismissed his Petition, or repelled the Objection of an opposing Party, it shall be lawful to bring the said Judgment under Review by Note of Advocation presented to the Court of Session: Provided always, that such Note shall be presented within Fifteen, or, where the Proceedings have been taken in the Courts of *Orkney* or *Shetland*, Thirty Days from the Date of the said Judgment; and that where the Judgment has been pronounced after Opposition duly entered or in Competition, such Note shall be intimated to the opposite Party, and a Bond of Caution for Expenses be lodged with the Sheriff Clerk, in like Manner and under the same Regulations as in the Case of Advocations of final Judgments of the Sheriff Courts of *Scotland* according to the presently existing Practice, and such Note shall be proceeded with in like Manner with the Notes of Advocation against final Judgments aforesaid; and it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Case, to allow further or additional Evidence to be taken, or to remit to the Sheriff to take the same, or to appoint the Case, or special Issues therein, to be tried by a Jury in Manner and to the Effect and with all and the like Remedies as are before provided, and such Judgment shall be pronounced on such Note of Advocation as shall be just: Provided always, that in every Case in which the Sheriff has refused to serve, but in which the Court of Session shall be of Opinion that the Party ought to be served, a Remit shall be made to the Sheriff, with Instructions to pronounce a Decree serving the said Party in Terms of this Act, which Decree may be thereafter recorded and extracted in Manner and to the Effect before provided: Provided also, that nothing herein contained shall prejudice the Right of any Person whose Petition of Service shall be refused without any opposing or competing Party having appeared and been heard on the Merits of the Competition to present a new Petition at any Time thereafter, or the Right of either Party in any of the Proceedings hereby authorized in the Court of the Sheriff to bring under Challenge whatever Judgment may be pronounced therein, by Process of Reduction before the Court of Session on any competent Ground.

§ XIX. That in every Case in which a Process of Reduction of any Decree of Service shall be brought before the Court of Session it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Case, either to allow further or additional Evidence to be taken in such Manner as may appear proper, or to appoint the Case, or special Issues therein, to be tried by a Jury; and such Jury Trial shall proceed in the same Manner and to the like Effect, and with all and the like Remedies as are before provided in regard to Jury Trials under Notes of Advocation, and such Judgment

*Advocation of Services.*

*See 1 & 2 G. 4, c. 88, § 11; 1 & 2 V., c. 86, § 2.*

Where Sheriff refuses to serve Petitioner, etc., Judgment may be reviewed.

*As to Induciae, see 1 & 2 V., c. 86, § 1.*

*Id.*, § 1.

Procedure when a Decree of Service is brought under Reduction.

*Supra*, § 18.

Form of Procedure.

## Effect of the Decree of Reduction.

## Forms and Effect of Procedure in the Court of Session.

## 1 &amp; 2 V., c. 86, etc.

## Sheriff of Chancery, if required, to discharge the Duties of Presenter of Signatures.

## Agents may practise before Sheriff Courts.

shall be pronounced in the said Process as shall be just: Provided always, that wherever the Judgment of the Sheriff brought under Reduction has proceeded on competing Petitions conjoined as aforesaid, and the Court of Session shall determine that a different Person shall be served from the Person preferred by the Sheriff, a Remit shall be made to the Sheriff, with Instructions to pronounce a Decree serving the said Person in Terms of this Act, which Decree may be thereafter recorded, and an Extract thereof given out in Manner and to the Effect before provided; and in any Case of Reduction of a Service the Judgment shall be conclusive, as between the Parties to the Suit, against the Party whose Service is reduced, and shall have the same Effect as if the Action had contained a Conclusion of Declarator that the Party served was not entitled to be served in the Character claimed, and Judgment had been pronounced in Terms of that Conclusion.

§ XX. That all Proceedings authorized by the present Act to be taken in the Court of Session, shall commence and be carried on in the same Manner with the same Description of Proceedings in ordinary Civil Cases, and any Judgment pronounced by the Lord Ordinary therein may be brought under Review of the Inner House by Reclaiming Note in like Manner as in such Cases, and all Judgments to be pronounced by the Court of Session in Terms of this Act shall be equally final and conclusive as the Judgments pronounced by the said Court in ordinary Civil Cases, and shall not be liable to Review by Reduction or otherwise, save and except to such Extent and Effect as Judgments by the said Court in ordinary Civil Cases are so liable: Provided always, that it shall be competent to appeal against the said Judgments to the House of Lords in like Manner as against Judgments of the Court in ordinary Civil Cases aforesaid.

§ XXI. A Decree of special Service, besides operating as a Retour, shall have the Operation and Effect of a Disposition from the Deceased to his Heirs.—XXII. The Deceased's Incapacity to be no Hindrance.—XXIII. A special Service not to infer a general Representation, either active or passive.—XXIV. Heir of Line or Heir Male may petition for general Service.—XXV. A general Service may be applied for and obtained to a limited Effect by annexing a Specification; and it shall infer only a limited passive Representation.—XXVI. Precepts of Clare Constat and Entries more burgi to remain unaffected.—XXVII. Jurisdiction of the Sheriff of Chancery.—XXVIII. Power to the Court of Session to pass Acts of Sederunt.—XXIX. Appointment of Sheriff of Chancery.

§ XXX. That the Sheriff of Chancery shall, when authorized and required by the Lord Justice General and President of the Court of Session, discharge the Duties at present or which may hereafter be attached to the Office of Presenter of Signatures, or any Part of these Duties, and that during such Part of the Year as may be required of him.

§ XXXI. That it shall be lawful and competent for Agents qualified to practise before the Court of Session, or before any Sheriff Court, to practise before the Sheriff of Chancery as well as in the ordinary Sheriff Courts in Petitions of Service.

§ XXXII. Payment of the Sheriff and Sheriff Clerk of Chancery.—XXXIII. Salaries to be regulated by the Commissioners of the Treasury on Vacancy.—XXXIV. Compensation, how to be applied for.—XXXV. Compensation, how to be paid.—XXXVI. Interpretation of Act.—XXXVII. Act may be amended, etc.



## 10° &amp; 11° VICTORIÆ REGINÆ.

## CAP. XLVIII.

*Entry by Confirmation.*

*An Act to facilitate the Transference of Lands and other Heritages in Scotland not held in Burgage Tenure.*—[25th June 1847.]

[Lands Transference Act, 1847. Amended by 21 & 22 V., c. 76; 23 & 24 V., c. 43.]

§ VI. And whereas the Entry of Heirs and Disponees by Charter of Confirmation from the Superior is in daily Use and Practice, and such Form and Mode of Entry is in many Cases more convenient than Entry by Resignation, without being of Prejudice to the Interests of the Superior; be it enacted, That where any Person shall be infeft in Lands or Heritages in Scotland holden of a Subject Superior upon a Disposition or other Deed of Conveyance granted by the Person last entered and infeft, or granted by a Person whose own Title to such Lands and Heritages is capable of being made public by Confirmation according to the existing Law and Practice, which Disposition shall contain an Obligation to infeft a me or a me vel de me, or upon a Decree of special Service, or upon a Decree of Adjudication or of Sale, containing a Warrant of Infestment in Terms of this Act, it shall be lawful and competent for such Person, upon Production to the Lord Ordinary on the Bills in the Court of Session of his Sasine in the said Lands and Warrants of the same, and upon showing the Terms and Conditions under which the said Lands are holden of the Superior thereof, to obtain Warrant for Letters of Horning to charge the Superior to grant in favour of such Party a Charter of Confirmation in the same Way and Form as is provided and in use for compelling Entry by Resignation; provided always, that the Changer shall at the same Time pay or tender to such Superior such Duties or Casualties as he is by Law entitled to receive upon the Entry of the Changer; and that it shall be lawful for every such Superior to show Cause why he ought not to be compelled to give Obedience to such Charge by offering a Note of Suspension to the Court of Session in the usual Manner: Provided also, that such Superior shall be entitled to insert in the Charter to be granted by him the Clauses of Tenendas and Reddendo contained in the former Charters of such Lands and Heritages, and all other Clauses and Conditions contained therein, in so far as the same are usual and necessary, and are not set forth in such Instrument of Sasine, or duly referred to in Terms of this Act, or of an Act passed in the present Session of Parliament, intituled, *An Act to amend the Law and Practice of Scotland as to the Service of Heirs*: Provided also, that where such Clauses and Conditions are set forth in such Instrument of Sasine, or duly referred to in Terms of this Act, or any other Act, the same shall not, without the Vassal's Consent, be repeated at length in such Charter of Confirmation.

Superior may be compelled to grant Entries by Confirmation.

See 20 G. 2, c. 50, § 12.

10 & 11 V., c. 47.

§ VIII. And whereas the Remedy afforded for obtaining an Entry under the present Procedure by Declarator of Tinsel of Superiority is in many Respects defective; be it enacted, That where the Person having right to the Superiority of any Lands, which Superiority is not defeasible at the Will of the Vassal or Disponee, shall not have completed his feudal Title thereto so as to enable him to enter any Heir or Disponee of the Vassal last publicly infeft in the said Lands, or any Adjudger or other Party deriving Right from him, and where such Heir, Disponee, Adjudger, or other Party, if such Person had been infeft in the Superiority, would have been entitled to compel

Where Superior's Title incomplete, Owner may in certain Cases apply to Lord Ordinary on the Bills to ordain him to complete his Title and grant an Entry, under Pain of Forfeiture.

*Forfeiture of  
Superiority.*

20 G. 2, c. 50, § 12.

*Am. by 21 & 22 V.,  
c. 76, § 28.**Id., § 24.*

Or Owner may, in such Case, apply to Lord Ordinary on the Bills to authorize Application for an Entry to the Crown or Prince or mediate Superior as in Vice of the recusant Superior.

*Id., § 24.*

Entry in virtue of this Act; or of an Act passed in the Twenty-eighth Year of the Reign of his Majesty King *George the Second*, or otherwise, it shall be competent to such Heir, Disponee, Adjudger, or other Party, provided the annual Reddendo attached to such Superiority shall not exceed Five Pounds Sterling in Value or Amount, to present a Petition to the Lord Ordinary on the Bills in the Form, or as nearly as may be in the Form, given in Schedule (E. No. 1), hereunto annexed, praying for Warrant of Service on such Person, and for Decree in the Terms set forth in such Petition, and the Lord Ordinary on the Bills shall pronounce an Order for Service of such Petition in Terms, or as nearly as may be in Terms of the Interlocutor given in Schedule (E. No. 2), hereunto annexed; and if after such Service, and the Expiration of the Days of Intimation, such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to the Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall for himself and his Heirs, whether of Line, Conquest, Tailie, or Provision, forfeit and amit all Right to the said Superiority, and the Lord Ordinary shall pronounce Decree or Judgment accordingly to the Effect of entitling the Petitioner, and his Heirs and Successors in the said Lands in all Time thereafter, to hold the same as Vassals immediately of and under the next Over Superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held, all in the Form, or as nearly as may be in the Form, given in Schedule (E. No. 3), hereunto annexed; and such Decree or Judgment, when extracted and recorded in the Register of Sasines appropriate to the Lands, shall be held absolutely to extinguish such Right of Superiority, and shall enable the Petitioner to apply to such Over Superior as his immediate Superior, for an Entry accordingly; and it is hereby provided, that in the renewed Investiture to be so obtained by the Petitioner under the Authority of the said Decree, the Tenendas and Reddendo contained in the Title Deeds of the forfeited Superiority shall be inserted in room of those contained in the Investiture of the Petitioner's Predecessor or Author, and the Lands shall be held by the Petitioner and his Successors according to the Tenure of the forfeited Superiority in all Time thereafter; and the Charter or Precept in the Petitioner's Favour shall be expressed as nearly as may be in One or other of the Forms given in Schedule (I.) hereunto annexed.

§ IX. That if in the Case aforesaid the annual Reddendo shall exceed in Value or Amount the Sum of Five Pounds Sterling, or, in the Option of the said Heir, Disponee, Adjudger, or other Party, whether the said annual Reddendo shall exceed the said Sum of Five Pounds Sterling or not, it shall be lawful for such Heir, Disponee, Adjudger, or other Party, to present a Petition to the Lord Ordinary on the Bills in the Form, or as nearly as may be in the Form, of Schedule (F. No. 1), hereunto annexed, praying for Warrant and Decree as there set forth, and the Lord Ordinary shall pronounce an Order for Service in the Terms, or as nearly as may be in the Terms, of the Interlocutor given in Schedule (F. No. 2), hereunto annexed; and if after such Service and Expiration of the Days of such Charge such Person shall not comply with the Demand of the Petition by completing his Title and granting Entry to such Petitioner as aforesaid, or shall not show reasonable Cause to the Lord Ordinary why he delays or refuses so to do, he shall for himself and his Heirs, whether of Line, Conquest, Tailzie, or Provision, forfeit and amit all Right to the Dues and Casualties payable on the Entry of such Petitioner, who shall also be entitled to retain his Feu Duties or other annual Prestations until fully paid and indemnified for all the Expenses of the Petition

*Forfeiture of Superiority.*

and Procedure thereon, and all the Expenses of completing his Title in Terms of this Act; and the Lord Ordinary shall pronounce interim Decree to that Effect, and grant interim Warrant for such Petitioner applying for and obtaining an Entry from the Crown or Prince of *Scotland*, or, in the Option of the Petitioner, from the mediate Over Superior as acting in the Vice of such Superior, all in the Form, or as nearly as may be in the Form, given in Schedule (F. No. 3), hereunto annexed; and such Petitioner shall be entitled forthwith to lodge, along with an Extract of the said Decree, in the Office of the Presenter of Signatures, a Draft of a proposed Charter or Precept from the Crown or Prince as in Vice of such Superior, with a short Note in Terms of the Act passed in the present Session of Parliament, to alter and amend the Practice in *Scotland* with regard to Crown Charters and Precepts from Chancery; and such Charter or Precept, for which the said extract Decree shall be a sufficient Warrant, may be in the Form given in the Schedule (H.) hereunto annexed, and shall be as effectual as if granted by the mediate Superior of the Feu when duly infeft in the Superiority; and when there is a mediate Over Superior such extract Decree shall, in the Option of the Petitioner, be directed against such mediate Over Superior, and shall be a sufficient Warrant for Letters of Horning to charge such Over Superior to enter the Petitioner by granting a valid Charter or Precept as in Vice of such Superior; and after Completion of his Title such Petitioner shall be entitled, if he thinks fit, to lodge, as Part of the Proceedings under the said Petition, an Account of the Expenses of that Process, and of completing his Title, and the Lord Ordinary shall, if required on the Part of such Petitioner, modify the Amount thereof, and decern for Retention as aforesaid in the Form given in Schedule (F. No. 4), hereunto annexed.

§ X. That the Lands and others contained in such Charter or Precept to be so obtained shall be holden of the Crown or Prince, or the mediate Over Superior, as in the Vice of the unentered immediate Superior, while and so long as he and his Successors, the immediate Superiors thereof, shall remain unentered, and thereafter until a new Entry in favour of the Vassal or his Successors shall become requisite.

§ XI. That when a Petition shall be presented as aforesaid praying for Warrant of Service, and for Decree against any Person so having a Right to the Superiority of any Lands, and not having completed his feudal Title thereto, whether the annual Reddendo shall be above or below the Value or Amount of Five Pounds Sterling, it shall be competent for him at any Time before Expiration of the Days of Intimation, or before interim Decree shall have been extracted as aforesaid, to lodge, as Part of the Proceedings under such Petition, a Minute, signed by himself or by his Mandatory or Agent, duly authorized by him, in Writing, stating that he tenders Relinquishment of the Right of Superiority which he holds on Apparency in favour of the Petitioner, and his Heirs and Successors, and such Minute shall be in the Form, or as nearly as may be in the Form, given in Schedule (G. No. 1), hereunto annexed; and if the Petitioner shall by himself or his Counsel or Agent subscribe or indorse upon such Minute an Acceptance of the same in the Form given in Schedule (G. No. 2), hereunto annexed, the Lord Ordinary is hereby authorized and required, on the Petitioner's Motion, to interpose his Authority to such Minute and Acceptance, and to decern and declare the Right of Superiority thus relinquished to be extinguished, to the Effect of making the Petitioner and his Successors in the said Lands hold the Lands as Vassals immediately of and under the Superior of the relinquished Superiority in permanency and by the Tenure and for the Reddendo by and for which such relinquished Superiority was held, the

Lands to be held temporarily of the Crown or Prince or mediate Superior.

The Party in Right of the Superiority may lodge a Minute tendering Relinquishment of his Right, and if accepted by the Petitioner, the Lord Ordinary may interpose his Authority.

21 & 22 V., c. 76,  
§ 28-26.

*Adjudication.*

Decree so to be pronounced to be in the Form, or as nearly as may be in the Form, of Schedule (G. No. 3), hereunto annexed; and the said Decree, when extracted and recorded in the Register of Sasines appropriate to the Lands, shall entitle the Petitioner and his Forebears to apply for an Entry to such Superior accordingly as his immediate Superior; and in the renewed Investiture to be obtained by the Petitioner under the Authority of the said Decree, the Tenendas and Reddendo contained in the Title Deeds of the relinquished Superiority shall be inserted in room of those contained in the Investiture of the Petitioner's Predecessor or Author, and the Lands shall be held by himself and his Successors according to the Tenure of the relinquished Superiority in all Time thereafter; and the Charter or Precept, as the Case may be, in the Petitioner's Favour may be expressed in One or other of the Forms given in Schedule (1.) hereunto annexed; but nothing herein contained shall be held as rendering it imperative on the Petitioner to accept of the offered Relinquishment, and to take the Place of his immediate Superior, it being hereby provided, that if he prefers it he shall be entitled to refuse the same, and to complete his Title by Entry from the Crown or Prince of Scotland, or the mediate Over Superior, as in the Vice of his immediate Superior.

§ XII. Over Superior's Rights not to be extended or affected.—XIII. Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its Value, but Forfeiture or Relinquishment not to infer Representation.—XIV. Forfeiture to take effect and Relinquishment lawful although Superiority form Part of an Estate held under Prohibitions against Alienation, etc.

§ XVI. That it shall no longer be competent to use Letters of general Charge or special Charge or general special Charge, but in an Action of Constitution of an Ancestor's Debt or Obligation against his unentered Heir the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a general Charge, the Inducies of which shall expire with the Inducies of such Summons, and shall infer the like Certification with such general Charge; and it shall thereafter be competent to adopt under such Summons the same Procedure, in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in Use, which Decree shall be a valid Decree of Constitution; and in an Action of Adjudication against such Heir following on such Decree of Constitution, or in an Action of Adjudication against an unentered Heir founded on his own Debt or Obligation, the Citation on and Execution of the Summons of Adjudication shall be held to imply and be equivalent to a special Charge or general special Charge, as the Circumstances may require, the Inducies of which Charge shall expire with the Inducies of such Summons, and shall infer the like Certification with such special Charge or general special Charge, as the Case may be; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of special Charge or general special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice heretofore in Use, which Decree shall be a valid Decree of Adjudication; and in an Action of Constitution and Adjudication combined in the same Summons against an unentered Heir, it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in Use; and in such combined

General and special and general special Charges to be no longer competent.

*Am. by 21 & 22 V., c. 76, § 29.*

Action of Constitution and Adjudication it shall be competent to pronounce Decree of Constitution and Adjudication in One and the same Interlocutor, and to extract the same in One and the same Extract, which Decree shall be a valid Decree of Constitution and Adjudication; anything in an Act of the Parliament of *Scotland* passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and twenty-one, or in any other Act of Parliament, or any Law or Practice to the contrary notwithstanding, the said Acts being hereby repealed to the Extent of making these Enactments operative, but no further.

§ XVII. That it shall no longer be necessary that a Summons of Adjudication or of Ranking and Sale be preceded by a Bill, such Bill being hereby abolished.

§ XVIII. And whereas it has been found inconvenient in Practice to libel and conclude for general Adjudication of Lands as the Alternative only of special Adjudication in Terms of an Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and seventy-two; be it enacted, That it shall no longer be necessary to libel or conclude for special Adjudication, and it shall be lawful to libel and conclude and decern for general Adjudication without such Alternative, anything in the said last mentioned Act or in any other Act of Parliament to the contrary notwithstanding, the said last mentioned Act and such other Acts being hereby repealed to the Effect of making this Enactment operative, but no further.

§ XIX. And whereas a Party who has obtained Decree of Adjudication or Decree of Sale is frequently exposed to Inconvenience from the Delay which may occur in obtaining Infestment; be it enacted, That in all Cases it shall be lawful for the Judges of the Court of Session, when pronouncing Decree of Adjudication, whether for Debt, or in Implement, or Decree of Sale, to grant Warrant in Terms, or as nearly as may be in Terms, of Schedule (K.) hereunto annexed, for infesting the Adjudger or Purchaser, and his Heirs and Successors, in the Lands and others contained in such Decree, to be holden by them alternatively by Two several Infestments and Manners of holding, one thereof to be holden of the Party adjudged from and his Heirs in free Blench for Payment of a Penny Scots in Name of Blench Farm at Whitsunday yearly upon the Ground of the said Lands if asked only, and freeing and relieving the Party adjudged from and his Heirs of all Feu Duties and Services exigible out of the said Lands by their immediate lawful Superiors thereof, and the other of the said Infestments to be holden from the Party adjudged from and his Heirs of and under their immediate lawful Superiors in the same Manner that the Party adjudged from, his Predecessors and Authors, held or might have holden the same, and that by Confirmation; and the Adjudger or Purchaser, and his Foresaids, shall, in virtue of such Decree of Adjudication or Decree of Sale, be entitled to complete their Title by obtaining Charter of Adjudication or of Sale from the Superior of the Lands and passing Infestment thereon, or, where the Person adjudged from is entered with his Superior or in a Situation to charge such Superior under the Powers herein contained to grant Entry by Confirmation, by taking Infestment in virtue of the Warrant contained in such Decree, which Infestment may be in the Form given in Schedule (L.) hereunto annexed, and shall, with the Decree of Adjudication or of Sale, be an effectual feudal Investiture in the said Lands in Terms of such Decree, holding Base of the Party adjudged from and his Heirs, until Confirmation thereof shall be granted by the immediate Superior of the Lands, or his Successors, in the same Manner and to the same Effect as if the Party adjudged from had granted a Disposi-

*Adjudication and Sale.*

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Bill for Summons of Adjudication and of Sale abolished.

Unnecessary to libel and conclude for Decree of special Adjudication.

St. 1672, c. 19.

Decrees of Adjudication and of Sale to contain Warrant for Infestment a me vel de me, and Infestment may follow accordingly.

*Inner House,  
Procedure.*

tion of the Lands to the Adjudger or Purchaser in the Terms of the Decree of Adjudication or of Sale, with an Obligation to infest a mevel de me, to be completed by Confirmation and a Precept of Sasine, and the Adjudger or Purchaser had been infest on such Precept; and the Effect of the Charter or Confirmation of the Sasine thus proceeding on such Decree of Adjudication or Decree of Sale shall be to make the Lands hold immediately of and under such Superior; but the Right of the Superior to the Composition payable by an Adjudger or Purchaser as due under the existing Law is hereby reserved entire, and the Adjudger or Purchaser, or his Foresaids, by passing Infestment on the Decree of Adjudication or of Sale in Manner above mentioned, shall become indebted in such Composition to the Superior, and shall be bound to pay the same upon the Superior's tendering a Charter of Confirmation, whether such Charter shall be accepted or not, and the Superior shall be entitled to recover Payment of such Composition as accords of Law; and it is hereby provided that the Sasine on such Decree of Adjudication, duly recorded, shall, without Prejudice to any other Diligence or Procedure, be of itself sufficient to make the Adjudication effectual in all Questions of Bankruptcy or Diligence: Provided always, that where the Charter, Contract, or other Deed by which the Vassal's Right is constituted contains a Prohibition against Subinfeudation or alternative Holding, such Decree and Sasine shall, notwithstanding any such Prohibition, form a valid feudal Investiture in favour of such Adjudger or Purchaser and their Foresaids, but without Prejudice to the Right of the Superior to require such Adjudger or Purchaser, or his Foresaids, to enter forthwith as accords of Law, and to deal with such Adjudger or Purchaser, or his Foresaids, as with a Vassal unentered.

Judgment of Lord Ordinary on the Bills subject to Review of Inner House, and Judgments in certain Cases to be final.

§ XX. That any Judgment pronounced by the Lord Ordinary in virtue of this Act shall be subject to Review by a Reclaiming Note in ordinary Form; but the Judgment of the Lord Ordinary, if not so brought under Review, and the Judgment of either Division of the Court upon such Reclaiming Note, whether such Judgments shall have been pronounced in Absence of the Respondent or not, shall be final and conclusive, and not subject to Review by Appeal to the House of Lords, or by Reduction, or in any other Mode or Form whatever; and it shall be competent to the Lord Ordinary, or to either Division of the Court reviewing any Judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole Circumstances of the Case, to find and decern in ordinary Form for the Expenses of any Proceedings under this Act against the Petitioner or Respondent personally.

## SCHEDULES REFERRED TO IN THE FOREGOING ACT.

### SCHEDULE (E.)

#### No. 1.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That by Disposition, dated the \_\_\_\_\_, granted by *C. D.* of \_\_\_\_\_, the said *C. D.* disposed to the Petitioner All and Whole [*here describe the Subjects as in the Disposition*], to be held of the Disposer's Superior, with Warrants of Resignation and Sasine.

That the Petitioner's Author, the said *C. D.*, held the said Lands and others of and under the late *E. F.* as his immediate lawful Superior, for an annual Reddendo not exceeding in Value or Amount Five Pounds Sterling; that *G. H.* is the eldest Son [*or whatever other Relation he is*] and apparent Heir of the said *E. F.*, and as such has Right

to the Superiority of the said Lands and others, but he has not made up a feudal Title thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him; and the Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.* personally, or at his Dwelling Place, [*here add a Prayer for edictal Citation in the usual Form, if the Party is furth of Scotland*], and to ordain him within Thirty Days after the Date of such Service [*or within Sixty days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infest in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail, he shall forfeit and amit all Right to the said Superiority; and in the Event of the said *G. H.* failing so to complete his Title and grant Entry to the Petitioner, or to show reasonable Cause why he delays or refuses so to do, to find and declare that the said *G. H.* has forfeited and amit all Right to the said Superiority, and that the Petitioner and his Heirs and Successors are entitled to hold the said Lands and others in all Time coming as Vassals immediately of and under the next Over Superior by the Tenure and for the Reddendo by and for which the forfeited Superiority was held. According to Justice, etc.

*Note.*—The above Form is applicable to the Case where the Petitioner requires a Charter of Resignation. In other Cases the Form must be varied, so far as necessary, to suit the Circumstances.

#### SCHEDULE (F.)

##### No. 1.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A. B.* humbly sheweth, That by Disposition, dated the \_\_\_\_\_, granted by *C. D.* of \_\_\_\_\_, the said *C. D.* disposed to the Petitioner All and Whole [*here describe the Subjects as in the Disposition*], to be held of the Disposer's Superior, with Warrants of Resignation and Sasine.

That the Petitioner's Author, the said *C. D.*, held the said Lands and others of and under the late *E. F.* as his immediate lawful Superior; that *G. H.* is the eldest Son [*or whatever other Relation he is*] and apparent Heir of the said *E. F.*, and as such has Right to the Superiority of the said Lands and others, but he has not made up a feudal Title thereto, and is therefore not in a Situation to grant Entry to the Petitioner, although demanded from him. The Petitioner now applies to your Lordship for Redress in Terms of the Act [*here mention this Act*], and produces the above mentioned Disposition in his Favour.

May it therefore please your Lordship, in Terms of the said Act, to grant Warrant for serving this Petition on the said *G. H.* personally, or at his Dwelling Place, [*here add a Prayer for edictal Citation in the usual Form, if the Party is furth of Scotland*], and to ordain him within Thirty Days after the Date of such Service [*or within Sixty Days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infest in the said Lands and others, and to enter the Petitioner in the same, on Payment of the Duties and Casualties exigible on such Entry, or else to show Cause for delaying or refusing to do so, with Certification that if he fail he shall forfeit and amit all Right to the Duties and Casualties payable on the Entry of the Petitioner, and that the Petitioner shall be entitled to retain from him and his Successors, as immediate Superiors, the yearly Feu Duties and whole other Prestations, until fully paid and indemnified for all the

Expenses of this Petition, and Procedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and thereafter, on resuming Consideration of this Petition, with or without Answers, to find and declare that the said *G. H.* has forfeited and amitted all Right to the Dues and Casualties payable on the Entry of the Petitioner, and that the Petitioner is entitled to retain from him and his Successors, as immediate Superiors, the yearly Fen Duties and whole other Prestations until fully paid and indemnified for all the Expenses of this Petition, and of the Procedure to follow hereon, and for all the Expenses of completing the Petitioner's Title in Terms of the said Act; and also to grant Warrant to the Petitioner to apply for and obtain an Entry in the said Lands and others from the Crown or Prince of Scotland, [or *I. K.*, the mediate Over Superior], as acting in the Vice of the said *G. H.*, and to authorise Decree to the above Effect to be extracted ad interim; and thereafter, upon the Completion of the Petitioner's Title by an Entry from the Crown or Prince of Scotland [or such mediate Over Superior] as aforesaid, to remit the Accounts of the Expenses of completing the Petitioner's Title to the Auditor to tax the same, and to report, and to modify the Amount of the said Expenses, and to decern for Retention of the Amount thereof as aforesaid [if the Parties have agreed to or are in Treaty for a Relinquishment, add, "or in the Event of the said *G. H.* relinquishing the Superiority, to find, decern, and declare the same to be extinguished in Manner and to the Effect expressed in the Statute"], or to do otherwise in the Premises as to your Lordship shall seem just.—According to Justice, etc.

*Note.*—The above Form is applicable to the Case where the Petitioner requires a Charter of Resignation. In other Cases the Form must be varied, so far as necessary, to suit the Circumstances.

#### SCHEDULE (K.)

*After granting Decree of Adjudication according to the Form presently in Use, or according to the Form in Use for the Time, the following Warrant to be inserted.*—"And the Lord Ordinary grants Warrant to any Notary Public to give to the said [here mention the Name of the Adjudger or Purchaser], and his Heirs and Successors, Sasine in the foresaid Subjects, in Terms of the 19th Section of the Act [here mention this Act]."

10° & 11° VICTORIÆ REGINÆ.

#### CAP. XLIX.

[Lands Transference Act, 1847 (Burgage). Am. by 28 & 24 V., c. 148.]

*An Act to facilitate the Transference of Lands and other Heritages in Scotland held in Burgage Tenure.*—[25th June 1847.]

General and special and general special Charges to be no longer competent to be used.

§ VIII. That it shall no longer be competent to use Letters of general Charge or special Charge, or general special Charge, but in an Action of Constitution of an Ancestor's Debt or Obligation against his unentered Heir, the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a general Charge, the Induciae of which shall expire with the Induciae of such Summons, and shall infer the like Certification with such general Charge; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir, according



To the Law and Practice heretofore in Use, which Decree shall be a valid Decree of Constitution ; and in an Action of Adjudication against such Heir following on such Decree of Constitution, or in an Action of Adjudication against an unentered Heir for his own Debt or Obligation, the Citation on and Execution of the Summons of Adjudication shall be held to imply and be equivalent to a special Charge, or general special Charge, as the Circumstances may require, the Induciae of which Charge shall expire with the Induciae of such Summons, and shall infer the like Certification with such special Charge or general special Charge, as the Case may be ; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of special Charge or general special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice heretofore in Use, which Decree shall be a valid Decree of Adjudication ; and in an Action of Constitution and Adjudication combined in the same Summons against an unentered Heir, it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in Use ; and in such combined Action of Constitution and Adjudication it shall be competent to pronounce Decree of Constitution and Adjudication in One and the same Interlocutor, and to extract the same in One and the same Extract, which Decree shall be a valid Decree of Constitution and Adjudication, anything in an Act of the Parliament of Scotland passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of Scotland passed in the Year One thousand six hundred and twenty-one, or in any other Act or Acts of Parliament, or any Law or Practice to the contrary notwithstanding, the said Acts being hereby repealed to the Extent of making these Enactments operative, but no further.

§ IX. That it shall no longer be necessary that a Summons of Adjudication, or of Ranking and Sale, be preceded by a Bill, such Bill being hereby abolished.

§ X. And whereas it has been found inconvenient in Practice to libel and conclude for general Adjudication of Lands as the Alternative only of special Adjudication in Terms of an Act of the Parliament of Scotland passed in the Year One thousand six hundred and seventy-two ; be it enacted, That it shall no longer be necessary to libel or conclude for special Adjudication, and it shall be lawful to libel and conclude and decern for general Adjudication without such Alternative, anything in the said last mentioned Act or in any other Act of Parliament to the contrary notwithstanding, the said last mentioned Act and such other Acts being hereby repealed to the Effect of making this Enactment operative, but no further.

*Adjudication and Sale.*

*Am. by 28 & 24 V., c. 143, § 16.*

Bill for Summons of Adjudication, etc., dispensed with.

Unnecessary to libel and conclude for Decree of special Adjudication.

*St. 1672, c. 19.*

## 11° &amp; 12° VICTORIÆ REGINÆ.

## CAP. XXXVI.

*An Act for the Amendment of the Law of Entail in Scotland.*—[14th August 1848.]

[Entail Amendment Act, 1848. Am. by 16 & 17 V., c. 94; 23 & 24 V., c. 95. See Stat. 1685, c. 22; 10 G. 3, c. 51; 5 G. 4, c. 87; 6 & 7 W. 4, c. 42.]

*As to Procedure under this Act, see 20 & 21 V., c. 56, § 4.*

*A. of S.* 18 Nov. 1848.

10 G. 3, c. 51.  
5 G. 4, c. 87.

§ I. Heir born after the Date of any future Entail may disentail the Estate; born before, may do so with Consent of Heir next in succession, being Heir Apparent under the Entail.—II. Heir in Possession under an existing Entail born after 1st August 1848 may disentail; born before that Date, may do so with Consent of Heir next in succession, being Heir Apparent born after 1st August 1848.—III. Heir of Entail under an existing Entail may disentail, with certain Consents.—IV. Heir of Entail may sell, charge, lease, and feu, with the like Consents as enable him to disentail.—V. Heir of Entail under existing Entail may excamb, with certain Consents.—VI. Provision for Disclosure of Entailer's Debts which affect the Estate disentailed.—VII. Creditors in Entailer's Debts, etc., using Inhibition not to be affected by Instrument of Disentail.—VIII. Settlements by Marriage Contract not to be disappointed.—IX. Heirs of Entail not to give Consent in opposition to Creditors in Debts now existing.—X. Heir Apparent under future Tailzie not to give Consent in opposition to his Creditors.—XI. Creditor of an Heir empowered to disentail may affect the Estate for Payment of his Debt.—XII. Acts 10 G. 3, c. 51, and 5 G. 4, c. 87, not to apply to future Tailzies.—XIII. Heir having obtained Decree for Expense of Improvements may grant Bond of annual Rent.—XIV. Heir in future expending Money in Improvements may grant Bond of annual Rent.—XV. Executor may call on Heir in Possession to grant Bond of annual Rent.—XVI. Proceedings where Improvements not executed in Terms of 10 G. 3.—XVII. No Adjudication for annual Rent. Annual Rent, how to be recovered. Annual Rent to be kept down.—XVIII. Heir of Entail may charge Estates by granting Bond and Disposition in Security.—XIX. Bonds of annual Rent or of Dispositions in Security for Improvements to operate as Discharges.—XX. Private Roads to be deemed Improvements under 10 G. 3, c. 51, and under this Act.—XXI. Provisions to younger Children may be made Charges upon the entailed Estate.—XXII. Heir in Possession to keep down the Interest on Provisions to Children.—XXIII. Provisions to Children not to be charged without Authority of Court.—XXIV. Power to grant Feus or long Leases.—XXV. Where entailed Estate may be charged with Debt, Estate may be sold for Payment thereof.—XXVI. Money arising from Sale of Estate, and Trust Money, may be applied in Payment of Entailer's Debts, etc.—XXVII. Money vested in trust for the Purchase of Land to be entailed may be dealt with as if it were the entailed Land.—XXVIII. Date of Act of Parliament, etc., directing Entail deemed to be the Date at which Land should have been entailed.—XXIX. Provisions to Wives and Children may be granted out of Money vested in trust for the Purchase of Lands to be entailed.—XXX. Creditor not to sell Land in excess of what is necessary to pay Debt affecting the Estate, and Reinvestment of Surplus.—XXXI. Guardians may consent for Minors.—XXXII. Form and Effect of Instrument of Disentail, and Registration thereof.

§ XXXIII. And be it enacted, That it shall be lawful for any Heir of Entail in Possession of an entailed Estate in *Scotland*, desiring to take advantage of any of the Provisions of this Act as to which the Authority of the Court is by this Act required, to make Application to that Effect by way of summary Petition to the Court, and such Petition shall set forth the Tailzie under which such Estate is held, and the Date of the Petitioner's Infettment therein, if any be, and the Names, Designations, and Places of Abode, so far as known to the Petitioner, of the Heirs Substitute of Entail (if any) whose Consents are required to such Petition, and whether such Heirs Substitute are of Age to consent on their own Behalf, and if not then the Names, Designations, and Places of Abode of their Fathers, or Tutors or Curators or other legal Guardians, and if such Heirs Substitute or any of them are the Children of such Heir of Entail in Possession himself, and are Minors, or legally incapacitated to act in their own Affairs, the same shall be stated in such Petition, and such Petition shall also set forth specifically to what Extent and in what Way and Manner such Estate is proposed to be affected.

§ XXXIV. And be it enacted, That the Court, on any such Petition being presented to it in Terms of this Act, shall appoint Intimation thereof to be made in the Minute Book and on the Walls in common Form, and shall also appoint the same to be publicly advertised once in the *Edinburgh Gazette*, and at least once weekly for Six successive Weeks, or for any longer Period the Court shall deem fit, in such Newspaper or Newspapers as shall be appointed by the Court; and it shall be sufficient in such Advertisements to state the leading Name of such Lands by which the same are commonly known, without any detailed Description thereof.

§ XXXV. And be it enacted, That after Intimation and Advertisement as aforesaid in Terms of such Deliverance of the Court it shall be competent to such Petitioner to move the Court to grant the Prayer of such Petition; and if the Procedure shall appear to the Court to be regular and proper, the Court shall interpose their Authority, and give Decree authorizing such Petitioner to do and perform the Act or Acts proposed in such Petition, in so far as the same may appear to the Court to be permitted by this Act, or the Court shall do otherwise in reference to such Petition as may appear to them to be proper, and consistent with this Act: Provided always, that it shall be competent, at any Time before Decree is actually pronounced and extracted, for any Person or Persons having Interest to compare and object on any relevant Ground to the Prayer of such Petition; and in the event of such Objection being offered the Court shall investigate and dispose of the same by such Form of Procedure as may seem to the Court to be expedient and proper; and in all Applications presented under this Act it shall be competent to the Court to decern for Costs of Suit against the Parties to the Proceedings, or any of them, or to decern for Payment thereof out of the Estate or Fund to which such Applications respectively relate.

§ XXXVI. And be it enacted, That it shall not be necessary in any Proceedings under this Act to call as Parties thereto any Heirs of Entail other than those whose Consent would be required by the Heir in Possession for the Time to an Instrument of Disentail; and no Heir of Entail other than those whose Consent would be required as aforesaid shall be entitled to appear or to be heard in such Proceedings.

§ XXXVII. And whereas by the said recited Act passed in the Session of Parliament holden in the Sixth and Seventh Years of the Reign of His late Majesty King *William* the Fourth certain Powers to make Excambions are conferred upon Heirs of Entail, certain Notices being given to Heirs Substitute and others, and certain Advertisements

#### *Procedure Clauses.*

Applications to the Court.

16 & 17 V., c. 94;  
20 & 21 V., c. 56,  
§ 4.

Intimation of Petitions.

*A. of S.* 24 Dec.  
1848; 22 May  
1849.

Procedure in Court.

#### *Defences.*

Heirs to be called in Proceedings under this Act.

Excambions under the Act 6 & 7 W. 4, c. 42, may be carried

*Procedure Clauses.*

through under the  
Forms of this Act.

[The above Act is  
not recited in this  
Act.]

Instruments of Dis-  
entail to be final.

39 & 40 G. 3, c. 98.

A. of S. 8 Dec.  
1848.

St. 1685, c. 22.

Consents to be in  
Writing, and to be  
irrevocable.

made, and certain Procedure had before the Court of Session, all as in the said recited Act especially provided; and it is expedient to simplify the Mode of effecting Excambions under the said Act, and to diminish the Expense thereof; be it enacted, That from and after the passing of this Act it shall not be necessary for any Heir of Entail in Possession intending to effect any Excambion under or by virtue of the said recited Act to adopt any of the Procedure thereby required, but it shall be competent to such Heir of Entail to present an Application to the Court by way of summary Petition in the Form and Manner provided by this Act, and the Court shall entertain, proceed with, and dispose of the same in every respect as if the Powers to effect Excambions conferred by the said recited Act had been contained in and conferred by this Act; and further, it shall not be necessary to record any Contract of Excambion which shall be executed at the Sight and with the Approbation of the Court, as required by the said recited Act, in any other Register than the Register of Tailzies.

§ XXXVIII. And be it enacted, That any Instrument of Disentail recorded in the Register of Tailzies under the Authority of the Court, where the Judgment of the Court allowing such Instrument of Disentail has not been brought under Review of the House of Lords by Appeal, or where such Judgment has not been brought under Reduction upon any relevant Ground during the Period within which such Judgment might have been appealed from, shall, as regards any Third Parties acting bona fide on the Faith thereof, be no longer reducible on any Ground of Irregularity or Noncompliance with the Provisions of this Act, but in respect of any such Ground of Challenge be final and conclusive.

§ XXXIX. In future Entail, irritant and resolute Clauses implied in Warrant to record.—XL. Irritancy not to affect Conveyances or Securities.—XLI. 39 & 40 G. 3, applied to Heritable Property in Scotland.—XLII. Proceedings may be taken under this Act, though Entail not recorded or Heir infest.—XLIII. Entail defective in any One Prohibition to be bad as to all.—XLIV. Instruments of Disentail may be registered in the Registers of Sasines.—XLV. No Irritancy or Forfeiture to be incurred for anything done under this Act.—XLVI. Act 1685 to remain in force, except as affected by this Act.—XLVII. Act not to be defeated by Trusts.—XLVIII. Or by Life-rents.—XLIX. Or by Leases.

§ L. And be it enacted, That all Consents of Heirs of Entail, or of their Tutors or Curators or other legal Guardians, under this Act, shall be in the Form of Writings duly tested according to the Law of Scotland, and otherwise in such Form as may be fixed by the Court of Session by Act of Sederunt; and no Consent duly given in the Manner provided by this Act shall be revocable by the Granter thereof.

§ LI. Court may make Acts of Sederunt.—LII. Interpretation of Act.—LIII. Act may be amended, etc.

## 12° &amp; 13° VICTORIÆ REGINÆ.

*Preamble.  
Interpretation.*

## CAP. LI.

*An Act for the better Protection of the Property of Pupils, absent Persons, and Persons under mental Incapacity in Scotland.*—[28th July 1849.]

[Pupils Protection Act, 1849. As to Procedure under this Act, see 20 & 21 V., c. 56, § 4, etc. See St. 1672, c. 2. A. of S. 11 Dec. 1849.]

WHEREAS an Act of Sederunt was passed by the Court of Session in Scotland on the Thirteenth Day of February One Thousand seven hundred and thirty, setting forth that the Court had often been applied to for appointing Factors on the Estates of Pupils not having Tutors, and of Persons absent who had not sufficiently empowered Persons to act for them, or who were under some Incapacity for the Time to manage their own Estates, to the end that the Estates of such Pupils or Persons might not suffer in the meantime, but be preserved for the Behoof of such Persons and all having Right therein, and therefore establishing certain Regulations in regard to the Conduct of such Judicial Factors, which Regulations are still in force: And whereas the Applications to the Court of Session for the Appointment of such Factors have become very numerous; and it has been found that the existing Regulations and the present Means of enforcing them are imperfect and insufficient for preventing in many Instances the Occurrence of great Irregularity in the Conduct of such Factors, and in consequence thereof great Loss has resulted to the Funds and Estates under their Charge and to the Parties interested therein; and it has therefore become necessary to make further Provision on that Behalf: And whereas it is also expedient to make Provision for the more regular accounting and official Management of Persons who shall hereafter be served as Tutor of Law, or appointed as Tutor-dative to any Pupil, or be served as Curator or appointed as Tutor-dative to any insane Person or Idiot: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the following Words and Expressions in this Act shall have the Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,) the Expression "Judicial Factor" or "Factor" shall mean Factor loco tutoris, Factor loco absentis, and Curator bonis; the Word "Tutor" shall mean

A. of S. 18 Feb. 1730; and see A. of S. 31 July 1690; 25 Feb. 1693; 31 July 1717.

Interpretation of Terms in this Act. *Infra*, § 25.

Duties of Factor.

any Person who after the passing of this Act shall be served Tutor of Law to any Pupil, or be appointed Tutor-dative to any Pupil or insane Person or Idiot; the Word "Curator" shall mean any Person who after the passing of this Act shall be served as Curator to any insane Person or Idiot; the Word "Accountant" shall mean the Accountant of the Court of Session, to be appointed under the Authority of this Act; the Expression "Lord Ordinary" shall mean the Lord Ordinary of the Court of Session discharging the Duties of junior Lord Ordinary in Time of Session, and the Lord Ordinary on the Bills in the Time of Vacation; the Expression "Court of Session" or "Court" shall, excepting as to the Power of passing Acts of Sederunt, mean either Division of the Court of Session; the Word "Estate" shall include all Property and Funds, and all Rights heritable and moveable; the Word "Lands" shall include all heritable Subjects; Words used in the Singular Number shall be held to include several Persons or Things, and Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

Judicial Factor to find Caution for duly performing his Duties.

*Infra*, § 26, 27.

*A. of S.* 11 Dec. 1849, § 2.

II. And be it enacted, That every Judicial Factor shall, within such Time after his Appointment as the Court shall direct, find Caution for his duly accounting for his Introductions and Management, and observing and performing every Duty incumbent upon him as Factor, in Terms of the Rules prescribed or to be prescribed for the Discharge of his Office, and in case of his Failure to do so his Appointment shall fall; and no Factor shall enter upon the Duties of his Office, nor shall an Extract of his Appointment be issued, until after such Caution is found and received as sufficient; and the Factor shall extract his Appointment without Delay.

Judicial Factor to lodge with the Accountant a distinct Rental of Lands committed to his Management, a List of Funds, and an Inventory of Moveables, etc.

III. And be it enacted, that every Judicial Factor shall, as soon as may be after extracting his Appointment, and within Six Months at latest from the Date on which his Bond of Caution shall have been received, lodge with the Accountant a distinct Rental of all Lands committed to his Management, specifying the Rents, Revenues, and Profits of such Lands, the existing Leases, and other Rights affecting the Lands, and the public Burdens and other Burdens thereon, and a List of all Monies and Funds belonging and Debts due to the Estate, specifying the Particulars of each Item, and the Interest or Revenue arising from the same, the Document by which the same is vouched, and the Nature and Value of any Security held for the same, and also an Inventory of any Household Furniture, Farm Stocking, Goods, or Moveables, including Rights moveable, forming Part of the Estate; and he shall, without Delay after ex-

tracting his Appointment, recover all Writs and Documents of Importance belonging to the Estate, and collect all Monies due to the same not securely invested, and use all reasonable Diligence in ascertaining the exact Nature and Amount of the Estate placed under his Charge; and he shall produce all such Writs and Documents, and Information so obtained by him, along with the said Rental, List of Funds, and Inventory, to the Accountant, which Rental, List, and Inventory, when adjusted and approved of by the Accountant, shall be signed by him and the Factor, and shall form a Ground of Charge against the Factor; and if at any Time thereafter any new Claims or Property belonging to the Estate shall be discovered, the Factor shall report the same in his next Account of Charge and Discharge to the Accountant, who shall make such Alteration on the Rental, List, and Inventory as may be thereby rendered necessary.

IV. And be it enacted, That the Factor shall close his Account of Charge and Discharge once in every Year, on a Day to be fixed by the Accountant, and within One Month thereafter shall lodge such Account in the Office of the Accountant, with the Vouchers numbered, and referred to in the Account by Number: Provided always, that it shall be competent for the Accountant, on Cause shown, to prorogue the Time for lodging such Accounts and Vouchers, but in no Case shall such Prorogation extend beyond Three Months from the Day fixed for the closing of the Accounts.

V. And be it enacted, That the Factor shall lodge the Money in his Hands in some One of the Banks in Scotland established by Act of Parliament or Royal Charter, in a separate Account or on Deposit, such Account or Deposit being in his own Name as Judicial Factor on the Estate; and if the Factor shall keep in his Hands more than Fifty Pounds of Money belonging to the Estate for more than Ten Days, he shall be charged with a Sum to the Estate at the Rate of Twenty Pounds per centum per annum on the Excess of the said Sum of Fifty Pounds for such Time as it shall be in his Hands beyond the said Ten Days; and, unless the Money has been so kept from innocent Causes, the Factor shall be dismissed from his Office, and shall have no Claim for Commission.

VI. And be it enacted, That if the Factor shall misconduct himself, or fail in the Discharge of his Duty, he shall be liable to such Fine, and to the Forfeiture of the whole or any Part of his Commission, and to Suspension or Removal from his Office as Factor, and to Payment of Expenses, or to any One or more of such Penalties, as the Court in its Discretion shall decide; and that over and

*Duties of Factor.*

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Factor to close his Accounts once a Year, and lodge the same with Accountant.

*A. of S.* 11 March 1861.

Factor to lodge Monies in One of the Banks of Scotland.

Penalties on Factor for Misconduct.

*Infra*, § 21, 31.

Special Powers.

Factor may apply  
for special Powers.

Entail Acts.

10 G. 3, c. 51.

11 & 12 V., c. 86.

See also 16 & 17 V.,  
c. 94.

Purchase of  
Annuity for Ward.

above such further Liability as he may be subject to as accords of Law in reparation of any Loss or Damage sustained by the Estate in consequence of such Misconduct or Failure.

VII. And be it enacted, That if at any Time it shall appear to the Factor that there is a strong Expediency for granting Abatement of Rent, either temporarily or permanently, or for renewing or granting a Lease for a Period of Years, or for draining, or for erecting Buildings or Fences, or for otherwise improving the Estate in a Manner not coming within the ordinary Course of factorial Management, he shall report the same to the Accountant, who may order any necessary Inquiry, and shall state his Opinion thereon in Writing; and such Report and Opinion may be submitted by the Factor to the Lord Ordinary, with a Note praying for the Sanction of the Court to the Measure proposed; and the Lord Ordinary shall, with or without further Inquiry, report the Matter to the Court, who, if they consider it expedient and consistent with due Regard to the Amount of the Estate at the Time, may sanction the Measure, and the Decision of the Court shall be final, and not subject to Appeal; and if the Estate be held under Entail, it shall be lawful to the Court to authorize the Factor to take Proceedings for constituting as a Charge against the future Heirs of Entail, or otherwise recovering, the Money expended in making any Improvements upon the Estate, under and in Terms of an Act passed in the Tenth Year of the Reign of his Majesty King George the Third, intituled, *An Act to encourage the Improvement of Lands, Tenements, and Hereditaments in that Part of Great Britain called Scotland held under Settlements of strict Entail*, and under and in Terms of an Act passed in the Session of Parliament holden in the Eleventh and Twelfth Years of the Reign of her present Majesty, intituled, *An Act for the Amendment of the Law of Entail in Scotland*; but nothing herein contained shall be held as conferring Power on the Court to authorize the Factor to build or enlarge a Mansion House upon the Estate, or to charge the Estate and future Heirs of Entail to a greater Extent than One Half the Amount with which the Heir in Possession, if under no Incapacity to act, could have charged the Estate under the said Acts, or either of them; and if any Factor having Charge of the Estate of any Lunatic or other Person incapable of managing his own Affairs shall deem it proper for the Comfort or Welfare of such Person that the whole or a Part of such Estate should be sunk on Annuity, he shall report the Matter to the Accountant, who shall state his Opinion thereon in Writing, and such Report and Opinion shall be submitted by the



Factor, with a Note as aforesaid, to the Lord Ordinary, who shall report the Matter to the Court, and it shall be in the Power of the Court to sanction the Measure, and the Decision of the Court shall be final, and not subject to Appeal; and in all other Matters in which special Powers are, according to the existing Practice, in use to be granted by the Court, the Court shall have Power to grant the same in like Manner and Form as is above provided.

VIII. And be it enacted, That in all Cases in which Application shall be made to the Lord Ordinary or the Court by any Factor, or other Person having Right to make the same, for special Powers or for the extraordinary Application of Money or Funds or Property belonging to any Estate, the Lord Ordinary or Court shall order such Intimation to be made as may be deemed proper.

IX. And be it enacted, That it shall be lawful for her Majesty and her Heirs and Successors to appoint a Person versant in Law and Accounts, to be called The Accountant of the Court of Session, for performing the Duties of that Office, with such yearly Salary, not exceeding Six hundred Pounds, payable quarterly out of the Fee Fund established by this Act, and with such Accommodation of Office Room, or reasonable Allowance for the same out of the said Fund, as may be fixed by the Commissioners of her Majesty's Treasury, or any Three or more of them, but such Salary shall always be restricted, so as not to exceed the clear existing Proceeds of the aforesaid Fee Fund after deducting all other Charges thereon; and the Accountant shall be allowed Two Clerks, whom he shall appoint, with a Salary not exceeding Two hundred Pounds yearly for the First and One hundred and fifty Pounds yearly for the Second, which Salaries shall also be paid quarterly out of the said Fee Fund; and the Accountant shall hold no other official Situation in the Court, and shall not, directly or indirectly, by himself or any Partner, be engaged in Practice; and he shall not directly or indirectly have any Management of or Intromission with any Money of any Estate under Charge of the Court: Provided always, that it shall be competent for the Court or for any Lord Ordinary to remit to the Accountant to examine and report in regard to any Matter depending before the Court or such Lord Ordinary, not connected with his official Duties, and in which it shall appear to the Court or such Lord Ordinary that the Report of an Accountant should be obtained, and for such Business the Accountant shall be entitled to reasonable Remuneration.

X. And be it enacted, That the Accountant shall superintend generally the Conduct of all Judicial Factors and

*Accountant of Court.*

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*Ext. by 21 & 22 V., c. 76, § 22; 23 & 24 V., c. 143, § 88.*

Before special Powers, etc., granted, Court to order such Intimation to be made as may be deemed proper.

Power to appoint Accountant.

*A. of S. 11 Dec. 1849, § 1.*

General Nature of Accountant's Duty;

*Inspection and  
Audit.*

to assign a Day for  
closing first Ac-  
count;

to adjust the  
Rental, List, and  
Inventory;

and to audit the  
Accounts.

Rules of exact  
Diligence may be  
dispensed with.

Tutors and Curators coming under the Provisions of this Act already appointed or to be hereafter appointed, and shall see that they duly observe all Rules and Regulations affecting them for the Time.

XI. And be it enacted, That on the Factor's Bond of Caution being received as sufficient, it shall be transmitted by the Clerk to the Process to the Accountant, who shall forthwith give a written Intimation, dated and signed, to the Factor or his Agent, stating that the Bond has been received, and assigning the Day on which the Factor is to close his first Account, being not less than Six nor more than Eighteen Months from the Date of such Intimation; and on the Death or Insolvency of the Cautioner of any Factor such Factor shall forthwith give Notice in Writing to the Accountant of such Death or Insolvency, and the Accountant shall, as soon as the Fact shall come to his Knowledge, by means of such Notice or otherwise, require new Caution to be found.

XII. And be it enacted, That the Accountant shall see that the Factor lodges a Rental, List, and Inventory in Terms of this Act, and shall, along with the Factor or his Agent, examine, verify, and adjust, and with the Factor sign the same, and shall ascertain the Circumstances of the Estate, and call for all necessary Documents, so as to form a clear Rule of Charge against the Factor at the Commencement of his Office, and the Accountant shall retain such Rental, List, and Inventory.

XIII. And be it enacted, That the Accountant shall see that the Factor's Accounts of Charge and Discharge, with the Vouchers thereof, are duly lodged, and shall thereafter examine the same without undue Delay, and audit the Account on the general Principles of good ordinary Management for the real Benefit of the Estate and of those interested therein, and he shall consider the Investments of the Estate and the Sufficiency thereof, and he shall be entitled to require from the Factor all necessary Information and Evidence, and he shall fix the Amount of the Factor's Commission for the Period embraced by the Audit according to his Opinion of what is just in each particular Case, and he shall strike the Balance and shall state the Result of his Audit in the Form of a short Report, and if he has made any Corrections on the Account, he shall, if required by the Factor, explain such Corrections and his Reasons for making them.

XIV. And be it enacted, That the Accountant shall have Power, upon Report to and with the Approval of the Lord Ordinary, where the Sum involved exceeds Twenty Pounds, and without such Report and Approval where the

Sum involved is less than Twenty Pounds, to dispense with the Rules of exact Diligence in any Matter of factorial Management.

XV. And be it enacted, That the Accountant's Audit and Report shall be conclusive against the Factor and his Cautioner if written Objections shall not be lodged by the Factor with the Accountant within Twenty Days from the Date of such Audit and Report being communicated to the Factor; but if Objections be lodged, the Accountant shall consider the same, and may alter his Report if he sees Cause; and unless the Objections are allowed or departed from, the Account and Report and whole Proceedings shall be transmitted by the Accountant to the Lord Ordinary, who shall call the Factor or his Agent, and if necessary the Accountant, before him at Chambers in reference thereto, and the Lord Ordinary or the Court, if the Matter shall be reported or brought under Review, may affirm, vary, or reverse the Audit and Report of the Accountant, and may reserve any Question or Questions which are raised in the Objections for the Factor till the final Audit of his Accounts, directing the Account to be balanced for the present, as the Lord Ordinary or the Court may think expedient and just; and no judgment of the Lord Ordinary, pronounced as aforesaid, shall be subject to Review at the Instance of the Accountant, nor, in case the Lord Ordinary shall reserve any Question as aforesaid, shall it be competent to the Factor to reclaim against such Reservation; but in case the Lord Ordinary shall decide against the Factor, he may bring the Interlocutor under Review of the Court, by a short Note of Appeal from the Lord Ordinary's Judgment, and the Judgment of the Court shall not be subject to Appeal at this Stage nor till the Termination of the Factory, without the Leave of the Court: Provided always, with reference to such Discussion between the Accountant and the Factor, that at the Audit of the Factor's Accounts, at the Termination of his Factory, it shall be competent to the Factor and his Representatives, or to any succeeding Factor, or to any Parties beneficially interested in the Estate, to enter upon such Matter of Objection, if the same has been reserved, but if the same has been decided by the Lord Ordinary or the Court, the Decision shall not be opened up except upon Cause shown; and the Factor shall not be entitled to charge the Expense of any such Proceedings against the Estate, without the special Authority of the Lord Ordinary or the Court.

XVI. And be it enacted, That it shall be lawful for the Cautioner to appear and be heard before the Accountant during the Course of the Audit, or to state Objections to

*Accountant's  
Reports.*

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Accountant's Report conclusive against Factor, if not objected to, and if Objections, how to be disposed of.

*Review.*

Cautioner may be heard before the Accountant.

*Accountant's Reports.*

the Audit within Twenty Days from the Date of the Report being intimated to the Factor as aforesaid, unless the Accountant shall grant further Time, not exceeding Six Weeks; and for the Purpose of stating such Objections the Accountant shall, if required, furnish to the Cautioner a Copy of his Report, and the Expense of such Copy, and of any Discussion that shall take place during or after the Audit at the Instance of the Cautioner, shall be borne by the Cautioner, and not by the Estate: Provided always, that no Objection stated on the Part of the Cautioner shall be any Ground for delaying any Consignation of any Balance ordered by the Accountant or otherwise giving immediate Effect to the Audit.

Parties interested may, upon Cause shown, open up Audit of Accounts.

XVII. And be it enacted, That, either at the Termination of the Factory or during its Subsistence, it shall be competent for any Party beneficially interested in the Estate, or for any succeeding Factor, to make Appearance, and upon Cause shown to open up the Audit of all Accounts which have been audited by the Accountant in Absence of such Party or succeeding Factor, and also all Questions in the Accounting which have either not been submitted to the Decision of the Lord Ordinary or the Court or been reserved, and also all Questions which have been decided merely as between the Accountant and the Factor or between the Factor and some other Beneficiary, reserving always to the Factor and his Representatives their Answers and Defences as accords of Law; but if such Party or succeeding Factor shall so appear, and such Question shall be opened up and decided, the Judgment, if pronounced between the Factor and a Party beneficially interested, shall be final and conclusive as between them and their Representatives, and if pronounced between the Factor and succeeding Factor, shall be final and conclusive against the Factor and the Estate.

*Res Judicata.*

Accountant to make an annual Report of all Judicial Factories, which shall be printed.

XVIII. And be it enacted, That the Accountant shall make an annual Report to the Court of Session, containing such Particulars as he may think fit, or as the Court may by Act of Sederunt or otherwise require, of all Judicial Factories, whether granted before or after the passing of this Act, then subsisting or remaining unsettled, and of his own Proceedings in reference to the same, and such annual Report shall be printed at the Cost of the Fee Fund established by this Act.

Accountant to make Requisitions and Orders on the Factor;

XIX. And be it enacted, That the Accountant shall make all such Requisitions or Orders on the Factor as he may consider necessary; and if such Requisition or Order shall be disobeyed or neglected, he shall report the same to the Lord Ordinary, giving previous Notice to the Factor or

his Agent, who shall lodge Objections in Writing, if he any has, within Forty-eight Hours after such Notice; and the Lord Ordinary is hereby empowered, on considering such Requisition or Order with the Objections thereto, if any, to recal or vary, confirm or repeat such Requisition or Order; and the Interlocutor of the Lord Ordinary shall be final and conclusive against the Accountant, and also against the Factor, unless he shall, at the Time of pronouncing Judgment, give Notice of his Intention to bring the Judgment under Review, in which Case the Lord Ordinary shall dispose of the Matter of Expenses and give any interim Order that may be necessary, which interim Order shall not be subject to Review.

XX. And be it enacted, That the Accountant shall, at all Times when requisite, report to the Lord Ordinary or the Court any Disobedience of any Requisition or Order, and any Misconduct or Failure in Duty on the Part of a Factor, or any Claims arising against a dismissed Factor or a Factor's Cautioner, or against the Representatives of a Factor or Cautioner deceased; and it shall be competent for the Lord Ordinary or the Court, on the Accountant's Report, to deal immediately with the Matter as accords of Law.

XXI. And be it enacted, That if the Accountant shall possess Information that shall lead him on reasonable Grounds to suspect Malversation or Misconduct on the Part of the Factor, such as may infer Removal or Punishment, he shall be entitled to lay a Case before her Majesty's Advocate, and who shall have Power to direct such Inquiry and to take such Proceedings by Petition and Complaint, or otherwise, as he shall think proper.

XXII. And be it enacted, with regard to all Factories subsisting at the Date of the passing of this Act, That if no Inventory and Rental has been lodged in Terms of the aforesaid Act of Sederunt, the Factor shall forthwith, after the passing of this Act, lodge a Rental, List of Funds, and Inventory of Moveables in Manner provided by this Act, and the same shall be adjusted and signed as also hereinbefore provided; and if his Accounts shall be in arrear, he shall forthwith lodge the same, with the Vouchers, in the Manner provided by this Act, and the Accountant shall audit his Accounts in so far as not already audited; and the Factor shall, in reference to all Monies which may come into his Hands after the passing of this Act, consign the same in Bank, in Manner and under the Penalties herein provided; and in reference to any Balance which

*Failure or Neglect,  
etc.*

*Review.*

and to report to the Lord Ordinary or the Court the Factor's Failure in Duty.

When Malversation reasonably suspected, a Case to be submitted to her Majesty's Advocate.

*Supra*, § 6.  
*See* 1 & 2 V., c. 118, § 80.  
*A. of S.* 11 July 1828, § 89.

Provision as to Factories constituted before the passing of the Act.

*Tutors of Law, etc.*

may be in his Hands at the Date of the passing of this Act, he shall consign the same in Bank at latest before the First Day of *June* One thousand eight hundred and fifty, after which Date the Provisions of this Act for consigning Money shall apply to such Factor in all respects; and in all other respects the whole Provisions of this Act shall take effect from and after the passing thereof, in regard to Factories constituted before the passing of this Act, in so far as the same admit of Application thereto.

Provision as to  
past Factories in-  
formally settled or  
desperate.

XXIII. And be it enacted, in regard to all Factories constituted before the passing of this Act, That any Settlement made of any such Factory, though informal, shall be held as a *prima facie* Discharge to the Factor, and the Accountant shall not report the same as a subsisting Factory, or require further Proceedings therein, but reserving the Right of all Parties interested in the Estate to show Cause to the Accountant or the Court why such Settlement should not be held as a Discharge to the Factor, in which Case, if the Cause shown shall be satisfactory to the Accountant or the Court, the Factory shall be held as subsisting and be proceeded with; and in any such Factory in which, though there has been no Settlement, it shall appear that no Benefit is likely to be derived by the Parties interested in the Estate from further Proceedings therein, and no Party interested shall make Appearance and require such Proceedings, the Accountant shall place amongst the Papers connected with the Estate a Memorandum of the Circumstances, and shall state in his Report, that further Proceedings are for the present unadvisable.

Power to Treas-  
ury to appoint  
additional Clerks to  
bring up Arrears.

XXIV. And whereas there is at present a great Arrear in auditing the Accounts of Judicial Factors in the Factories now existing, and it may be beyond the Power of the Accountant to bring up such Arrear with the Aid only of his ordinary Establishment; be it enacted, That it shall be lawful for the Commissioners of her Majesty's Treasury, or any Three or more of them, to appoint such additional Clerks as may be required for that Purpose, but during such Time only as such additional Assistance shall be required for such Purpose, and to permit such Clerks to be remunerated out of the Fee Fund hereby established by Salary or otherwise.

Provisions of the  
Act made appli-  
cable to Tutors of  
Law, Tutors-  
dative, and Cura-  
tors to insane  
Persons.

*Supra*, § 1.

XXV. And be it enacted, That except as to the Mode of Appointment and Caution, the Provisions of this Act relating to Judicial Factors, or relating to the Office, Powers, and Duties of the Accountant appointed by this Act, shall be applicable, in so far as the same admit of Application, to every Person who, after the passing of this

Act, shall be served Tutor of Law to any Pupil, or appointed Tutor-dative to any Pupil or insane Person or Idiot, or served Curator to any insane Person or Idiot.

*Caution in  
Factories.*

XXVI. And be it enacted, That, from and after the passing of this Act, in every Service of a Person as Tutor of Law to a Pupil, or as Curator to an insane Person or Idiot, there shall, besides the Obligations usually inserted therein, be inserted in the Bond of Caution taken by the Clerk in such Service an Obligation to observe and perform every Duty incumbent on such Person, in Terms of the Rules prescribed or to be prescribed for the Discharge of his Office in all respects, together with a Consent to Registration in the Books of Council and Session for Execution; and such Bond of Caution shall be transmitted, with the other Steps of Procedure, to the Director of Chancery, who shall forthwith transmit the same to the Accountant; and no Extract of the Retour in such Service shall be given out, nor any Letters of Tutorship or Curatorship be issued thereon, until such Bond of Caution shall have been received by the Director of Chancery; and in Bonds of Caution to be taken in the Court of Exchequer from Tutors-dative to Pupils or insane Persons or Idiots there shall, besides the usual Obligations, be inserted an Obligation to the Effect aforesaid; and such Bonds of Caution shall remain in the Court of Exchequer, according to the Rules of that Court.

Bonds of Caution  
for Tutors and  
Curators.

*Supra*, § 2.

XXVII. And be it enacted, That it shall be lawful for the Court of Session or Court of Exchequer, as the Case may be, to limit upon Cause shown the Caution to be found by Factors and Tutors and Curators to a specified Amount, and also to authorize, if they shall deem it expedient, Bonds or Policies of the *British* Guarantee Association, or other public Company incorporated by Act of Parliament or Royal Charter carrying on Guarantee Business within *Scotland*, to be accepted and taken instead of Bonds of Caution by private Individuals.

Amount of Caution for Factors, etc., may be limited, and Bonds of Caution by Guarantee Associations, etc., taken.

*See Act of Incorporation of British Guarantee Company.*

XXVIII. And be it enacted, That whenever the Director of Chancery shall issue Letters of Tutorship or Curatorship, proceeding on any Service or Gift dated after the passing of this Act, he shall transmit a certified Copy of such Letters to the Accountant, who, after making an Entry thereof in his Books, shall transmit the same to One of the principal Clerks of Session in order of Seniority and by Rotation; and such certified Copy, when so transmitted, shall be held as establishing a summary Process in regard to the Estate to which such Letters relate before that Division of the Court to which such Clerk shall be-

Certified Copy of Letters of Tutorship or Curatorship to form the Basis of a summary Process.

*Existing Tutories.  
Resignation.*

Tutors, etc., served  
before the passing  
of this Act may  
put themselves  
under its Provi-  
sions.

Rental, List, and  
Inventory to be  
equivalent to  
tutorial or cura-  
torial Inventory.  
1672, c. 2.

Resignation and  
Removal of Tutors  
and Curators.  
*Supra*, § 6.

long, to the same Effect as if the Tutor or Curator to whom such Letters are issued had been appointed Judicial Factor by the Court on a Petition in ordinary Form; and such certified Copy shall be held for the Purposes of this Act as equivalent to such Appointment.

XXIX. And be it enacted, That any Person who before the passing of this Act shall have been served Tutor of Law to any Pupil, or appointed Tutor-dative to any Pupil or insane Person or Idiot, or served Curator to any insane Person or Idiot, shall with Consent of his Cautioner have Right at any Time during the Continuance of his Office to place himself and his Cautioner and the Estate under the Provisions of this Act, by presenting to the Director of Chancery a written Statement of his Desire to that Effect, signed by himself and his Cautioner and duly attested, and the Director of Chancery shall retain such Statement, and shall transmit a certified Copy thereof, and of the Letters of Tutorship or Curatorship issued to the Applicant, to the Accountant, who shall transmit the same to One of the principal Clerks of Session in the Manner aforesaid, and such certified Copies when so transmitted shall be held as establishing a summary Process in regard to the Estate as aforesaid, and the whole Provisions of this Act shall thereafter be applicable to the said Tutor or Curator and his Cautioner and the Estate in the same Manner as if such Tutor or Curator had been served or appointed after the passing of this Act, and the Tutor or Curator and his Cautioner shall be held as bound for due Fulfilment of all the Provisions of this Act accordingly.

XXX. And be it enacted, That the Rental, List, and Inventory lodged with the Accountant in Terms of this Act by any Tutor or Curator as aforesaid shall be held as equivalent to the tutorial or curatorial Inventory directed to be given up by any Act of the *Scottish* Parliament, passed in the Year One thousand six hundred and seventy-two, intituled, *Act concerning Pupils and Minors, and their Tutors and Curators*; and the Report of any additional Funds or Property belonging to the Pupil or insane Person or Idiot, in Terms of this Act, shall be held as equivalent to an *Eik* to a tutorial or curatorial Inventory in Terms of the said recited Act which is hereby repealed, in so far as may be necessary to give Effect to these Enactments, but no further.

XXXI. And be it enacted, That the Court shall have Power, on Cause shown, to remove or accept the Resignation of any Tutor or Curator coming under the Provisions of this Act, and to appoint a Factor loco tutoris or Curator bonis in his Room.

XXXII. And be it enacted, That nothing herein con-



tained shall be held to confer on any such Tutor or Curator a Right not now existing in Law to Remuneration for the Discharge of the Duties attached to his Office, or to limit his Powers or alter the Rules of his Responsibility as by Law now existing, excepting in so far as is herein expressly provided.

*Discharge.*

Remuneration and Responsibility of Factors and Curators not altered.

XXXIII. And be it enacted, That the Accountant shall have Power to require the Officers of any Bank with which any Factor or Tutor or Curator shall have opened an Account for the Estate under his Care, to exhibit all Entries in the Books of such Bank connected with such Estate, and the Officers of such Bank are hereby required to exhibit the same accordingly, and to allow the Accountant to take such Copies thereof as he may require.

Power to Accountant to require Information from Banks.

XXXIV. And be it enacted, That it shall be competent for any Factor, Tutor, or Curator, at the Termination of his Office, to present a Petition to the Court for his Discharge, calling all Persons interested in the Estate, so far as known to him, as Parties to such Petition, and the Court shall order such Intimation and Service as they may think fit; and it shall be competent to any Persons so called, or to any other Persons showing Right and Interest, to appear as Parties, and upon Cause shown to open up the Audit of the Factor's Accounts, and thereafter, and after receiving the Report of the Accountant, and making any further Inquiry which may be necessary, the Court shall pronounce Judgment thereon; and such Judgment, if it shall discharge such Factor, Tutor, or Curator, shall be final and conclusive against all Parties concerned, though pronounced in Absence, provided the same shall not be opened up as a Decree in Absence in the Court of Session within the Time limited for appealing to the House of Lords, or shall not be appealed from within that Time.

Discharge of Factors, Tutors, and Curators.

XXXV. And be it enacted, That the Accountant shall be the Custodier of all Bank Deposit Receipts and other Vouchers for Sums of Money already placed or to be hereafter placed in Bank under Authority of the Court, and of all judicial Bonds of Caution and other judicial Bonds granted or to be granted under the Authority of the Court or any of the Judges thereof, or in reference to the Business thereof, and all other Documents of a like Nature, which, according to the present Law or Practice, are entrusted to the keeping of the senior principal Clerk of Session, who, after the Commencement of this Act, shall cease to discharge his present Duty as Custodier of such Documents, and shall transfer all such Documents as are in his Possession to the Accountant; and thereafter the Clerk in each Process in

Accountant to be Custodier of Bank Receipts.

*Miscellaneous.*

Records in the  
Accountant's  
Office to be open  
for Inspection.

which Consignation is made shall lodge all such Bank Receipts and Bonds or Vouchers in the Hands of the Accountant, whose Acknowledgment therefor shall be an Acquittance to such Clerk.

XXXVI. And be it enacted, That the whole Records and Papers relating to Factories, Tutories, and Curatories retained in the Accountant's Office shall be open to Inspection on Payment of such Fees as may be fixed by the Court; but shall remain in the Office, and not be lent out unless under Authority of the Court or of the Lord Ordinary, and Copies therefrom, attested by the Accountant, shall have the same Authority as the Originals themselves, and shall be furnished to any Party requiring the same, on Payment therefor of such Fees as may be fixed by the Court; and such Fees for Inspection and attested Copies shall be paid weekly by the Accountant into the Fund hereinafter established.

Banks to accumulate Principal and Interest on Accounts and Deposits.

XXXVII. And be it enacted, That from and after the passing of this Act every Bank in *Scotland* with which any Money shall have been or shall be deposited or lodged by any Judicial Factor, Tutor, or Curator, or under Authority of any Court in *Scotland*, or with reference to any Suit in any Court in *Scotland*, whether on Deposit Receipt or on Account Current, or otherwise, shall once at least in every Year accumulate the Interest with the principal Sum, so that both shall thereafter bear Interest together as Principal; and any Bank failing so to do shall be liable to account as if such Money had been so accumulated.

Provision for Accountant's illness or temporary Absence.

XXXVIII. And be it enacted, That in case of the Illness or temporary Absence of the Accountant the Lord President of the Court of Session, or other Judge acting as President for the Time, may authorize any One of the Accountant's Clerks or other qualified Person to discharge the Duties of the Accountant for the Time.

Establishment of Fee Fund.

XXXIX. And be it enacted, That for establishing the Fee Fund hereinbefore mentioned there shall be payable by each Estate under Charge of a Judicial Factor, and by each Estate of a Pupil to whom a Tutor of Law shall hereafter be served, and by the Estate of every Pupil, insane Person, or Idiot to whom a Tutor-dative shall hereafter be appointed, and by the Estate of every insane Person or Idiot to whom a Curator shall hereafter be served as aforesaid, and by all other Estates or Parties whom the Court may deem to have Benefit from the Services of the Accountant, such Fees as shall from Time to Time be authorized by the Court, having due Regard to the Sums required for the Purposes of this Act, and to the Interests of the Estates to be benefited thereby; and such Fees shall be lodged by the

*Miscellaneous.*

Accountant at least once in every Week in that Bank in *Edinburgh* which for the Time shall be employed by Government to transact its Business there; and such Fees, with any Interest accruing thereon, shall form a Fee Fund, out of which the Accountant shall draw and pay his own Salary and the other Salaries herein directed to be paid, and the whole Expenses attending his Office and Duties; and the Accountant shall annually exhibit an Account of his Intrusions with the said Fee Fund to the Queen's and Lord Treasurer's Remembrancer of the Court of Exchequer in *Scotland*, who is hereby required to examine and audit such Account, and thereafter to submit the same to the Lord President of the Court of Session with a View to the Reconsideration by the Court of the Fees then in Use to be charged, and such Fees shall be so regulated, increased, or diminished by the Court from Year to Year, or oftener, as to keep up the Fee Fund to an Amount sufficient for answering the Charges thereon, and for providing such reserved Fund as may be necessary to meet the current and contingent Expenses of the Establishment; and any Surplus arising on such Fee Fund shall be paid over to the said Queen's and Lord Treasurer's Remembrancer, and remain in his Hands to meet the future Charges on such Fee Fund; and the Accountant shall enter into Bond to her Majesty with Surety for his Intrusions to the Satisfaction of the said Queen's and Lord Treasurer's Remembrancer, and to such Amount, and either by a public Company or private Individual, as to him may seem proper.

Power to pass  
Acts of Sederunt.  
*A. of S.* 11 Dec.  
1849; 1 Feb.  
1850; 11 March  
1851.

XL. And be it enacted, That it shall be competent to the Court of Session, and they are hereby authorized and required, from Time to Time to pass such Acts of Sederunt as shall be necessary or proper for the further Regulation of the Manner of appointing Judicial Factors, and the Manner of discharging their Duty, and the Manner of discharging the Duties of the Accountant, and the Manner of applying the Provisions of this Act to the case of Tutors and Curators, and the Forms of Process to be used in pursuance of this Act, and the Manner of verifying by Affidavit, Declaration, Certificate, or otherwise the Sufficiency of the Caution offered for Factors, Tutors, and Curators, and all other Matters requisite for more effectually carrying out the Purposes of this Act.

Act may be  
amended, etc.

XLI. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

Actions for Costs.

12° &amp; 13° VICTORIÆ REGINÆ.

CAP. LXXVIII.

*An Act for the more effectual Taxation of Costs on private Bills in the House of Lords, and to facilitate the Taxation of other Costs on private Bills in certain Cases.*—[28th July 1849.]

Parliamentary Agent, Attorney, or Solicitor not to sue for Costs until One Month after Delivery of his Bill.

§ II. And be it enacted, That no Parliamentary Agent, Attorney, or Solicitor, nor any Executor, Administrator, or Assignee of any Parliamentary Agent, Attorney, or Solicitor, shall commence or maintain any Action or Suit for the Recovery of any Costs, Charges, or Expenses in respect of any Proceedings in the House of Lords in any future Session of Parliament relating to any Petition for a private Bill, or private Bill, or in respect of complying with the Standing Orders of the said House relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Lords, until the Expiration of One Month after such Parliamentary Agent, Attorney, or Solicitor, or Executor, Administrator, or Assignee of such Parliamentary Agent, Attorney, or Solicitor has delivered unto the Party to be charged therewith, or sent by Post to or left for him at his Counting House, Office of Business, Dwelling House, or last known Place of Abode, a Bill of such Costs, Charges, and Expenses, and which Bill shall either be subscribed with the proper Hand of such Parliamentary Agent, Attorney, or Solicitor, or in the Case of a Partnership by any of the Partners, either with his own Name or with the Name of such Partnership, or of the Executor, Administrator, or Assignee of such Parliamentary Agent, Attorney, or Solicitor, or be enclosed in or accompanied by a Letter subscribed in like Manner referring to such Bill: Provided always, that it shall not in any Case be necessary, in the first Instance, for such Parliamentary Agent, Attorney, or Solicitor, or the Executor, Administrator, or Assignee of such Parliamentary Agent, Attorney, or Solicitor, in proving a Compliance with this Act, to prove the Contents of the Bill delivered, sent, or left by him, but it shall be sufficient to prove that a Bill of Costs, Charges, and Expenses, subscribed in Manner aforesaid, or inclosed in or accompanied by such Letter as aforesaid; but nevertheless it shall be competent for the other Party to show that the Bill so delivered, sent, or left was not such a Bill as constituted a bona fide compliance with this Act: Provided also, that it shall be lawful for any Judge of the Superior Courts of Law or Equity in England or Ireland, or of the Court of Session in Scotland, to authorize a Parliamentary Agent, Attorney, or Solicitor to commence an Action or Suit for the Recovery of his Costs, Charges, and Expenses against the Party chargeable therewith, although One Month has not expired from the Delivery of a Bill as aforesaid, on Proof to the Satisfaction of the said Judge that there is probable Cause for believing that such Party is about to quit that Part of the United Kingdom in which such Judge hath Jurisdiction.

Evidence of Delivery of Bill.

Power to Judge to authorize Action before Expiration of One Month.

§ VIII. On Application of Party chargeable, or on Application of Parliamentary Agent, Attorney, or Solicitor, the Taxing Officer to tax the Bill. No Application to be entertained by Taxing Officer after Verdict obtained.

13<sup>o</sup> & 14<sup>o</sup> VICTORIÆ REGINÆ.

## CAP. XXXVI.

*An Act to facilitate Procedure in the Court of Session in Scotland.*—[29<sup>th</sup> July 1850.] [Court of Session Act, 1850.]

WHEREAS an Act was passed in the Fifty-fifth Year of the Reign of his Majesty King George the Third, intituled, *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes*; and another Act was passed in the Fifty-ninth Year of the Reign of his said Majesty, intituled, *An Act to amend an Act passed in the Fifty-fifth Year of the Reign of his present Majesty, intituled, "An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes;"* and another Act was passed in the Sixth Year of the Reign of his Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland*; and another Act was passed in the Session of Parliament holden in the Eleventh Year of the Reign of his Majesty King George the Fourth and in the First Year of the Reign of his Majesty King William the Fourth, intituled, *An Act for uniting the Benefits of Jury Trial in Civil Cases with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the judicial Establishments of Scotland*; and another Act was passed in the Session of Parliament holden in the First and Second Years of the Reign of her present Majesty, intituled, *An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in Scotland, and to reduce the Fees payable in those Courts*: And whereas it is expedient that the Provisions and Enactments of the said recited Acts should be in some respects altered and amended, and further Regulations established for expediting the Business of the Court of Session in Scotland: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Pursuer of any Summons before the Court of Session shall set forth in such Summons, in such Way and Manner as the Court, having regard to the Forms set

See St. 1672, c. 16;

Act of Reg. 29

April, and 2 Nov.

1696; June 1696;

A. of S. Consolidation Act, 11 July

1828.

55 G. 3, c. 42.

59 G. 3, c. 35.

6 G. 4, c. 120.

11 G. 4 & 1 W. 4,  
c. 69.

1 &amp; 2 V., c. 118.

July 1828, § 22-70.

New Form of

Summons and De-

fences.

Am. 6 G. 4, c. 120,

§ 2.

See *infra*, § 15, 18,

19.

As to Malice, etc.,

see 43 G. 3, c. 141,

§ 1; 9 G. 4, c. 29, §

26; 11 G. 4, c. 37,

§ 13.

*Record.*

*As to Summons, A. of S.* 31 Oct. 1850.

*As to Defences, Act of Reg.* 1695, § 28.

*As to Will, A. of S.* 11 July 1828, § 22; 8 July 1831.

*As to Condescendence, see* 6 G. 4, c. 120, § 9, 10.

*Infra*, § 2. *A. of S.* 11 July 1838, § 105.

*As to Arrestment, see* 1 & 2 V., c. 114, § 16, 17, 18; 19 & 20 V., c. 60, § 8; 19 & 20 V., c. 91, § 1.

Record, how to be made up.

6 G. 4, c. 120, § 8, 9.

*Infra*, § 9, 10.

*A. of S.* 11 July 1828, § 105-6.

*Transmission of Process.*

*Infra*, § 4.

Where Pursuer willing, Record may be closed on Summons and Defences.  
*Am.* 6 G. 4, c. 120, § 7.  
*A. of S.* 11 July 1828, § 54.

forth in Schedule (A.) hereunto annexed, may from Time to Time prescribe by Act of Sederunt as applicable to the various Forms of Action now in Use, the Name and Designation of such Pursuer, and the Name and Designation of the Defender, and the Conclusions of the Action, without any Statement whatever of the Grounds of Action; but the Allegations in Fact which form the Grounds of Action shall be set forth in an articulate Condescendence, together with a Note of the Pursuer's Pleas in Law, which Condescendence and Pleas in Law shall be annexed to such Summons, and shall be held to constitute Part thereof; and the Defences to such Summons shall be in the Form of articulate Answers to such Condescendence, and, where necessary, appended thereto a Statement of the Allegations in Fact on which the Defender founds in Defence, and also a Note of the Defender's Pleas in Law.

II. And be it enacted, That where Defences are lodged, and unless the Record shall be closed upon the Summons and Defences, the Record shall be made by Revisal by the Pursuer of the Condescendence annexed to his Summons, and Revisal by the Defender of his Defences; and upon the Expiration of the original or prorogated Period, as the Case may be, for lodging a revised Condescendence, if no revised Condescendence shall be lodged, and upon the Expiration of the original or prorogated Period, as the Case may be, for lodging revised Defences, if a revised Condescendence shall be lodged, or sooner if the Parties shall consent thereto, the Clerk to the Process shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall appoint a Time, being within Six Days from the Date of the Process being so transmitted to him, for Parties attending him at Chambers, by their Counsel, with a view to the Adjustment and closing of the Record; and the Lord Ordinary may at such Meeting, or at any adjourned Meeting which he may appoint, allow or require such Alterations and Amendments to be made on the Record as to him may seem proper, and may close the Record, or appoint a Day on or before which the Record shall be closed; and if the Record shall not be closed on or before the Day fixed by such Appointment or subsequent Prorogation, the Lord Ordinary shall pronounce an Interlocutor declaring it closed accordingly.

III. Provided always, and be it enacted, That where the Pursuer is willing to close the Record upon the Summons and Defences without any Revisal, a Consent to that Effect may be endorsed on the Defences, and signed by Counsel; and it shall then be the Duty of the Clerk to the Process to transmit the Process forthwith to the Lord Ordinary, with

a view to the Adjustment and closing of the Record as aforesaid; and the Case shall thenceforward be proceeded with in the same Way and Manner, and the same Regulations and Provisions shall thereupon apply, as in the other Cases of Transmission to the Lord Ordinary, with a view to the Adjustment and closing of the Record, hereinbefore mentioned: Provided always, that it shall in such Case be competent to the Lord Ordinary, upon the Motion of the Defender, and by an Interlocutor to be pronounced by the Lord Ordinary, either in Court or at Chambers, to make such Order for or with a view to Revisal as he may deem fit.

IV. And be it enacted, That the Periods appointed for lodging any Paper, or for transmitting any Process to a Lord Ordinary, or for closing a Record, may always be prorogated by written Consent of Parties; and the Periods appointed for lodging any Paper, or for closing a Record, may always be once prorogated by the Lord Ordinary, without such Consent, on special Cause shown; and such Prorogations may be granted, of Consent as aforesaid, either before or after the Lapse of such Periods; and in every Interlocutor of a Lord Ordinary prorogating, on special Cause shown, the Time for lodging any Paper or for closing a Record, the Nature of such Cause shall be set forth, and a definite Time shall be therein fixed within which the Paper is to be lodged, or the Record closed; and it shall not be competent to the Lord Ordinary to grant such Prorogation, even upon Cause shown, oftener than once, unless such Cause shall have been allowed by the Inner House on the Report of the Lord Ordinary.

V. And be it enacted, That it shall not be necessary, in order to the closing of a Record in any Process before the Court of Session, that the Record be authenticated by Counsel as adjusted or closed, whether by Minute of Assent or otherwise, but such Record shall be closed by Interlocutor of the Lord Ordinary before whom the Process depends; and such Interlocutor shall be subject to Review of the Inner House; and the Interlocutor of the Inner House to be pronounced on such Review shall not in any Case be subject to Appeal as an Interlocutory Judgment.

VI. And be it enacted, That it shall not be necessary to print any Part of the Process before the closing of the Record; but when the Record is closed, if it shall appear to the Lord Ordinary to be expedient that the same should be printed while the Cause is in dependence in the Outer House, the Lord Ordinary may appoint such Number of Copies thereof as he may deem proper to be printed by the Pursuer at the mutual Expense of the Parties; and on such

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*Record.*

Prorogations, how to be granted.

*Am.* 6 G. 4, c. 120, § 12.

*A. of S.* 11 July 1828, § 109-11.

*As to Inner House Papers, see A. of S.* 11 July 1828, § 80; 19 Nov. 1829.

Record to be closed by Interlocutor, and no Authentication by Counsel to be necessary.

6 G. 4, c. 120, § 10, 11.

*Infra*, § 6.

*See* 48 G. 3, c. 151, § 15.

Lord Ordinary may appoint closed Record to be printed.

*Supra*, § 5. *See A. of S.* 11 July 1828, § 106.

*Record in Reductions, etc.*

Dilatory Defences in Reductions, how to be disposed of.  
*Infra*, § 8; *Id.* § 2.  
*Am.* 1 & 2 G. 4, c. 38, § 6; 6 G. 4, c. 120, § 27; 1 & 2 V., c. 118, § 2.  
*A. of S.* 15 June 1564; 11 June 1596; 81 Jan. 1638.

Production may be satisfied on Box Day.  
 6 G. 4, c. 120, § 8.  
*A. of S.* 11 July 1828, § 61.

Record to be made up in Advocations and Suspensions, after Answers are lodged, similarly to other Actions;  
*Am.* 6 G. 4, c. 120, § 48.  
*Supra*, § 2. *Id.* § 82.  
 16 & 17 V., c. 80, § 25.  
*A. of S.* 11 July 1828, § 49, 52.

and in Processes of Competition, etc., as may be fixed by the Court of Session by Act of Sederunt.  
*See infra*, § 19. *Id.* § 2.  
*See St.* 1584, c. 3.

Reclaiming Days limited to Ten, except for Judgments on the Merits, and Decrees in Absence.

Appointment being made the Pursuer shall print such Copies accordingly, and upon Payment by the Defender of One Half of the whole Expense of such Printing, shall furnish to him One Half of such Copies.

VII. And be it enacted, That where in a Process of Reduction the Defender is to object to the Title of the Pursuer, or to plead on an exclusive Title, or to state any other Objection against satisfying the Production, he shall in the first Instance lodge Defences confined to these Points, and the Form of such Defences, and the Procedure thereon, shall be the same as in the Case of peremptory Defences in an ordinary Action; and if the Defences so lodged shall be repelled, the Defender, after the Production has been satisfied, shall give in Defences applicable to the Grounds of Reduction and upon the Merits of the Reduction, and a Record may be made up thereafter as in any ordinary Action.

VIII. And be it enacted, That in a Process of Reduction the Production may be satisfied either during Session or on any Box Day in Vacation or Recess.

IX. And be it enacted, That where Answers are lodged by a Respondent in any Process of Suspension or Advocation, the Record shall thereafter be made up therein in the same Way and Manner in all respects as is directed by this Act in regard to any ordinary Action in which Defences have been lodged; and the Pursuer of such Process of Advocation or Suspension and the Respondent therein shall have severally the same Rights and Privileges as the Pursuer and Defender in such ordinary Action respectively; and the whole Provisions and Enactments of this Act in regard to the making up of the Record in such ordinary Actions shall apply, as far as may be, to such Processes of Advocation and Suspension.

X. And be it enacted, That the Procedure with respect to the making up of the Record in Processes of Competition, or other Processes to which the Provisions of this Act with respect to the making up of the Record may not be applicable, shall be conducted as at present, until regulated by the Court of Session; but the Procedure in such Actions shall be regulated by the said Court by Act of Sederunt, as soon as conveniently may be after the Date at which this Act shall take effect, in such Way and Manner as to assimilate in so far as convenient the Procedure in such Actions with respect to the making up of the Record to the Procedure by this Act provided.

XI. And be it enacted, That it shall not be competent to reclaim against any Interlocutor of the Lord Ordinary,

XI. Falla, 14 Jan. 1851, 18 D. 482.—Menzies' Exr. 7 March 1851, 18 D. 904.—Arnold, 11 Mar. 1852, 14 D. 768.—Henderson, 18 Nov. 1852, 15 D. 11.—Threshie,



at any Time after the Expiration of Ten Days from the Date of signing such Interlocutor, with the Exception only of Reclaiming Notes against Interlocutors disposing in whole or in part of the Merits of the Cause, and against Decrees in Absence, which Reclaiming Notes shall continue to be competent in like Manner as at the passing of this Act.

XII. And be it enacted, That it shall not be competent to reclaim against any Interlocutor of a Lord Ordinary, not being an Interlocutor disposing of a dilatory Defence, or an Interlocutor sisting Process, or an Interlocutor disposing in whole or in part of the Merits of the Cause, pronounced before the closing of the Record: Provided always, that any Interlocutor pronounced before the closing of the Record may be reclaimed against, with the Leave of the Lord Ordinary, at any Time within Ten Days from the Date of pronouncing the same, or without the Leave of the Lord Ordinary, at any Time within Ten Days from the Date of signing the Interlocutor closing the Record.

XIII. And be it enacted, That no Reclaiming Note to the Inner House, and no Petition of Appeal to the House of Lords, in any Process before the Court of Session, shall be held to remove such Process from before the Lord Ordinary or the Court, as the Case may be, as regards any Point or Points not necessarily dependent on the Interlocutor so submitted to Review, but such Process shall, for all Purposes, and to all Effects not necessarily dependent on such Interlocutor, remain before the Lord Ordinary or the Court, as the Case may be, and shall be proceeded in by the Lord Ordinary or the Court notwithstanding such Reclaiming Note or Appeal, if it appear to the Lord Ordinary or the Court to be expedient and proper.

XIV. And be it enacted, That it shall not be competent to the Lord Ordinary to direct Cases or Minutes of Debate or other written Argument to be prepared by the Parties, whether for the Use of himself or of the Inner House; but it shall be competent for the Lord Ordinary at any Time after hearing Parties on a closed Record to take such Cause to report to the Inner House without Cases or Minutes of Debate.

XV. And be it enacted, That all Summonses in consistorial or other Causes which are at the passing of this Act

# *Review.*

*Am.* 6 G. 4, c. 120, § 5, 18.

*As to Vacations; see A. of S.* 20 July 1853.

*As to Petitions, see* 20 & 21 V., c. 56, § 6.

Reclaiming Notes during the making up of the Record prohibited, except with Leave of the Lord Ordinary.

6 G. 4, c. 120, § 4, 18.

Process may proceed, notwithstanding Reclaiming Note or Appeal.

Lords Ordinary not to order written Argument. *Am.* 6 G. 4, c. 120, § 16, 20.

*May report Cause. Infra,* § 51.

Summonses now signed by Clerk of

17 Jan. 1854, 16 D. 341.—Anderson, 20 Jan. 1854, 16 D. 367.—M'Lay, 24 Feb. 1854, 16 D. 658.—M'Farlane, 9 March 1855, 17 D. 657.—Marjoribanks, 18 Feb. 1857, 19 D. 474.—Anstruther, 10 March 1857, 19 D. 674.—Cairns, 14 Dec. 1858, 21 D. 116.—Young, 19 July 1859, 21 D. 1858.

XII. Leburn, 12 Nov. 1851, 14 D. 18.—Galloway, 17 Jan. 1854, 16 D. 842.—Robertson, 2 June 1860, 22 D. 1145.

XIII. Collins, 1 Feb. 1854, 16 D. 483.—Forbes, 16 Dec. 1857, 20 D. 287.

XIV. Brown, 11 July 1851, 18 D. 1355.—*Maga. of Edin.* 21 Nov. 1855, 18 D. 77.

XV. Craig, 18 Dec. 1851, 14 D. 261.

*Execution of  
Summons.*

the Court of Session may be signed by a Writer to the Signet.

*Am.* 1 W. 4, c. 69, § 40.

*Infra*, § 16.

Actions of Adherence, etc., to be instituted in the Court of Session.

*Ext.* 1 W. 4, c. 69, § 33. *See* 21 & 22 V., c. 93; *St.* 1573, c. 55.

Members of College of Justice not to institute Actions not otherwise competent.

*Am.* 1672, c. 16, § 16; 50 G. 3, c. 112, § 28. *Am. by* 16 & 17 V., c. 80, § 48.

Summonses not to proceed on Bills, or to bear Dates except the Dates of signeting.

Regulations as to Multiplepointings. *See Schedule infra.* *Supra*, § 10. *A. of S.* 11 July 1828, § 47, 48.

Short Forms of Execution provided.

*Infra*, § 21, 22.

*See St.* 1686, c. 4; 1693, c. 12.

*A. of S.* 15 Feb. 1723.

required to be signed by a Clerk of the Court of Session may be signed either by such Clerk or by a Writer to her Majesty's Signet; and the Signature of such Writer to her Majesty's Signet shall be in all respects equivalent to the Signature of such Clerk.

XVI. And be it enacted and declared, That all the Provisions of the said recited Act passed in the Session of Parliament holden in the Eleventh Year of the Reign of his Majesty King *George* the Fourth and the First Year of the Reign of his Majesty King *William* the Fourth, and of this Act, applicable to Actions of Declarator of Marriage and of Nullity of Marriage, and to Actions of Declarator of Legitimacy and of Bastardy, and to Actions of Divorce, and to Actions of Separation à mensâ et thoro, are and shall be applicable to Actions of Adherence, and all other consistorial Actions, though not specially mentioned in the said recited Act.

XVII. And be it enacted, That no Member of the College of Justice shall, in respect of any Privilege as such, be entitled to institute any Action or Proceeding, either original or by way of Review, before the Court of Session which could not have been instituted by him before such Court if he had not been a Member of the College of Justice.

XVIII. And be it enacted, That it shall not be necessary that any Summons before the Court of Session shall proceed upon a Bill; and no Summons passing the Signet shall bear any Date but the Date of signeting, which shall be held to be the Date of the Summons.

XIX. And be it enacted, That in Summonses of Multiplepointing it shall be the Duty of the Party raising such Action to state specifically in the Body of the Summons who is the real Raiser of the Action; and it shall be competent for any Number of Parties whose Claims in such Action depend upon the same Ground to state such Claims in the same Paper.

XX. And be it enacted, That every Execution of a Summons, and every Execution of Intimation of a Note of Suspension, or of Suspension and Interdict, or of Suspension and Liberation, or of Advocation, shall be written at the End of the Summons itself, or at the End of the usual certified Copy of such Note of Suspension, or of Suspension and Interdict, or of Suspension and Liberation, or of Advocation, and, where necessary, on continuous Sheets, but not on a separate Paper; and such Execution shall be in the Form, or as nearly as may be in the Form, of Schedule (B.) hereunto annexed, which Form shall be equally valid and effectual in all respects as the longer Form of Execution at present in Use.

XXI. And be it enacted, That all Summonses before the Court of Session may proceed on Fourteen Days Warning where the Defender is within *Scotland*, unless in *Orkney* or *Shetland*, and Twenty-one Days Warning where he is in *Orkney* or *Shetland* or furth of *Scotland*, in place of the longer Induciæ required by the present Practice; and such shorter Induciæ shall also be competent and sufficient in respect to all other Letters passing her Majesty's Signet bearing a Citation, Charge, Publication, or Service against Persons within or furth of *Scotland* respectively, and in respect to all Edictal Charges upon Decrees and registered Protests: Provided always, that in all Cases where any shorter Induciæ than the Induciæ above mentioned are at present sufficient, such shorter Induciæ shall continue to be sufficient after the passing of this Act.

XXII. And be it enacted, That the subsisting Forms of Edictal Citation, Charge, Publication, Citation, and Service at the Market Cross of *Edinburgh*, and Pier and Shore of *Leith*, in Processes of Ranking and Sale, and in all other Processes and Proceedings whatsoever, and also the subsisting Forms of Edictal Citations of the Minor's next of Kin at the Market Cross of the County Town or Head Burgh of the Shire where the Minor has his Lands and Goods, and of Citation of the Tutors and Curators of Minors at the Market Cross of the County Town or Head Burgh of the Shire of the Minor's Residence, shall cease and be discontinued; and in lieu thereof all such Edictal Citations, Charges, Publications, Citations, and Services shall be done and performed by Delivery of a Copy thereof at the Office of the Keeper of Edictal Citations according to the Mode established by the said recited Act passed in the Sixth Year of the Reign of his late Majesty King *George* the Fourth in regard to Persons furth of *Scotland*, and by an Act of Sederunt of the Court of Session dated the Twenty-fourth Day of *December* One thousand eight hundred and thirty-eight.

XXIII. And be it enacted, That where Protestation shall be put up in the Minute Book of the Court of Session in reference to any Summons, Suspension, or Advocation, and Warrant is issued for Extract thereof, if it be a Protestation for not calling, such Extract shall contain a Decerniture for Three Pounds Three Shillings of Protestation Money, as Expenses, in lieu of such Sum of Protestation Money as would in that Case be inserted in the Extract according to the present Practice; and if the Protestation be for not enrolling, but after the Calling and Return of the Summons or other initial Writ, with or without Defences or Answers, as the Case may require, the Defender or Respondent shall be entitled to his just Expenses as between

*Execution of  
Summonses.*

Induciæ of Summonses and other Writs passing the Signet shortened.

*Am.* 50 G. 3, c. 112, § 27; 6 G. 4, c. 120, § 53; *St.* 1685, c. 48.

*When Arrestment used; see* 1 & 2 V., c. 114, § 17.

Edictal Citations regulated.

*Am.* 6 G. 4, c. 120, § 51-2.  
*Id.* § 58. *A. of S.* 14 Dec. 1806.

*As to Arrestments,* 1 & 2 V., c. 114, § 18.

Protestations for not calling and enrolling regulated.  
1 & 2 V., c. 118, § 8.

*A. of S.* 11 July 1828, § 80.

*Evidence.**Provision as to Re-  
poning.*

*See 48 G. 3, c. 151,  
§ 16.*

*Depending Process.*

*Granting judicial  
Bonds in Maritime  
Causes abolished.*

*Am. 1 W. 4, c. 69,  
§ 28.*

*Copy of an Inter-  
locutor granting  
Commission or  
Diligence to be  
equivalent to a  
formal Extract.*

Party and Party; and the Auditor of Court shall tax the Account of these Expenses accordingly, as in the Case of a Decree in Absence, on Production to him of the Protestation as given out for Extract, or of a Certificate by the Keeper of the Minute Book that the same has been given out for Extract; and the Account so taxed shall be a sufficient Warrant to the Extractor to insert the taxed Amount as the just Expenses, together with the Expense of Extract, in the Extract Protestation, in lieu of the Sum at present inserted as Expenses in such Extract: Provided always, that a Pursuer may be reponed against a Protestation for not calling at any Time not later than Ten Days after the same has been given out for Extract, whether Extract shall have issued or not, by lodging with the Clerk, in order to calling, his Summons or other Writ, with the relative Documents, accompanied by the Receipt of the Agent for the Defender for the said Sum of Three Pounds Three Shillings of Protestation Money, or consigning the Money itself in the Hands of the Clerk, for the Use of the Agent for the Defender, and payable to him on Demand; and that a Pursuer may also be reponed, within the like Period, against a Protestation for not enrolling and insisting, by enrolling his Summons or other Writ in the Outer House Roll, and forthwith lodging that Writ, with the Enrolling Clerk's Certificate of Enrolment annexed, in the Hands of the Clerk, as thenceforward a depending Process, accompanied by the Receipt of the Agent for the Defender for the taxed Amount of the Protestation Money and Expense of Extract, or, in lieu thereof, consigning the Money itself in the Hands of the Clerk for the Use of such Agent, and payable to him on Demand: Provided also, that whenever a Summons or other Writ shall have been duly enrolled by the Pursuer in the Outer House Roll, whether Protestation shall have been put up or not, the same shall thenceforth become to all Intents and Purposes a depending Process, under Control of the Lord Ordinary and of the Court, until finally disposed of by Interlocutor.

XXIV. And be it enacted, That the granting of Bonds De damnis et impensis by the Pursuer, and of Bonds De judicio sisti et judicatum solvi by the Defender, in Maritime Causes, before the Court of Session, shall be and the same is hereby abolished, reserving the Operation and Effect of all such Bonds bearing Date prior to the Date at which this Act shall take effect.

XXV. And be it enacted, That it shall not be necessary to obtain a formal Extract of any Commission or Diligence granted or to be granted by a Lord Ordinary or the Court in any Process or Proceeding before the Court of

Session, but a Copy of the Interlocutor granting such Commission and Diligence, or One or other of them, certified by the Clerk to such Process or Proceeding, or by his Assistant, shall have the same Force, Operation, and Effect as such formal Extract according to the present Practice.

XXVI. And be it enacted, That where in consistorial Causes either Party desires to examine Witnesses furth of the Kingdom, the Depositions of such Witnesses may be taken under a Commission to be issued by the Lord Ordinary or the Court to any Commissioner whom they may appoint, in the same Manner as in any Proof upon Commission in an ordinary Action.

XXVII. And be it enacted, That in all Cases it shall be competent to appoint a Diligence to be reported on any Box Day in Vacation or Recess.

XXVIII. And be it enacted, That every Act and Warrant and Decree granted or to be granted during the Dependence of a Process before the Court of Session, and which according to the present Practice might be extracted ad interim, if special Allowance to that Effect were granted by the Lord Ordinary or the Court, shall be extractible ad interim without the Necessity of such special Allowance, unless the Lord Ordinary or the Court shall otherwise direct.

XXIX. And be it enacted, That every Decree for Expenses pronounced after the passing of this Act shall be held to include a Decree for the Expense of extracting the same.

XXX. And be it enacted, That where according to present Practice a Cause would require to be wakened in order to its being proceeded with, it shall be competent for either of the Parties to enrol such Cause before the Lord Ordinary in common Form in order to an Interlocutor of Wakening, and the Lord Ordinary may thereupon direct Ten Days Intimation of such Motion to be made to the known Agent of the other Party in the Cause, or to such Party himself, and also in the Minute Book of the Court of Session; and on the Expiration of Ten Days from the Date of such Intimations being made respectively, and on a Certificate being lodged in Process under the Hand of the Agent of the Party applying for such Wakening, certifying that he has duly intimated such Interlocutor in Terms thereof to the opposite Party or to his known Agent, either by Delivery to such Party or his Agent personally, or by Transmission through the Post to the known Address of such Party or

### *Evidence.*

*See* 50 G. 3, c. 112, § 11; 1 & 2 G. 4, c. 38, § 24, 25.

Witnesses abroad may be examined in consistorial Causes by Commission.

*Am.* 1 W. 4, c. 69, § 37, 41.

*Ext. by* 22 V., c. 20. *A. of S.* 11 March 1800.

Diligences may be reported on Box Days.

*Supra*, § 8. *A. of S.* 11 July 1828, § 108.

Interim Decrees to be extractible without special Allowance.

*Infra*, § 29. *See* 50 G. 3, c. 112.

Decree for Expenses to include Expense of Extract.

*Fees regulated by A. of S.* 19 Dec.

1835; 17 July 1841; 7 July 1848. 1 & 2 G. 4, c. 38, § 33.

Actions may be wakened without a Summons.

*Infra*, § 31.

XXVIII. *Drew*, 31 May 1855, 17 D. 784.—*Buchanan*, 18 Jan. 1860, 22 D. 371.—*Taylor*, 28 March 1860, 22 D. 1031.

XXIX. *Scott*, 28 Feb. 1860, 22 D. 922.

*Advocations and  
Suspensions.*

Transference of  
Action to include  
a Wakening.  
*Supra*, § 30.  
*A. of S.* 15 Feb.  
1728.

In Advocations  
and Suspensions,  
if Record closed  
and Proof con-  
cluded in inferior  
Court, Case may be  
taken at once to  
the Inner House  
without a Judg-  
ment of the Lord  
Ordinary.

xxxii.—xxxiv.  
*See* 1 & 2 V., c. 86.

*Ext. by* 16 & 17 V.,  
c. 80, § 25.

*See* 6 & 7 W. 4, c.  
55, § 5, 6.

Who to fix Lord  
Ordinary and Di-  
vision in Advoca-  
tions and Suspend-  
ions.

*See* 20 & 21 V., c.  
55, § 7.

Agent, of a full Copy of such Interlocutor, it shall be competent to the Lord Ordinary to hold the Cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

XXXI. And be it enacted, That where any Action shall be transferred against any Party or Parties, such Transference shall include a Wakening against such Party or Parties.

XXXII. And be it enacted, That in all Cases of Advocation or Suspension which shall come to depend before the Court of Session, where a Record has been made up and closed and a Proof led and concluded before the inferior Judge, the Lord Ordinary before whom such Advocation or Suspension is enrolled shall at the first Calling of the Cause, if a Motion to that Effect be made by either of the Parties, appoint such Record and Proof, with any other Papers which may be deemed to be necessary, to be printed and boxed for the Judges of the Inner House, and shall report the Cause to the Inner House, who shall thereupon proceed to dispose of it in the same Way and Manner as if it had been reported by the Lord Ordinary upon a closed Record prepared in the Court of Session; and the Party by whom such Motion is made shall defray in the first Instance the Expense of such Printing.

XXXIII. And be it enacted, That in every Process of Suspension of any Charge or threatened Charge, and in every Process of Suspension of a Decree, and in every Process of Interdict where Interdict has been granted in the Bill Chamber, and is unrecalled, it shall be lawful for the Respondent in such Process, so soon as the Note of Suspension, or Note of Suspension and Interdict, is passed, and at any Time not later than the Twelfth Day from the Date of the Interlocutor passing the same, or in the Case of a Suspension of a Decree not later than the Twelfth Day from the Date of the Service of the Note of Suspension and Interlocutor passing the same upon the Respondent, to fix the Lord Ordinary and Division of the Court of Session to which such Process shall belong, and that by Indorsation of the Names of such Lord Ordinary and Division on such passed Note of Suspension, or of Suspension and Interdict, signed by such Respondent, or his Counsel or Agent in such Process, unless where such Note of Suspension, or Note of Suspension and Interdict, has been passed on Review by or on advising with either Division of the Court, in which Case the Process shall be fixed throughout with

XXXII. *Sidey*, 28 Jan. 1851, 13 D. 548.—*Balfour*, 27 Jan. 1854, 16 D. 418.—*Miller*, 9 Feb. 1858, 20 D. 522.

XXXIII. *Laing*, 20 May 1858, 15 D. 663.

that Division of the Court as at present; and in every Process of Advocation it shall be lawful for the Pursuer or Petitioner in the inferior Court (except in the Case of counter conjoined Processes, or of Competitions or Advocations of Brieves) at any Time not later than the Twelfth Day from the Date of the Intimation of the Note of Advocation, and Notice of its Receipt by a Clerk of the Court of Session, to the Respondent, or not later than the Twelfth Day from the Date of the passing of the Note of Advocation, to fix the Lord Ordinary and Division of the Court to which such Process shall belong, and that by Indorsation on such Note of Advocation as aforesaid; and such passed Notes of Suspension, and of Suspension and Interdict, and of Advocation, shall, during the Period above mentioned, be always in the Custody of the Clerks of the Bills, or of the Clerk to the Process, who shall not be entitled to lend up the same to the Parties or either of them, or to part with the Custody thereof, until such Period has elapsed: Provided always, that, except in the Cases hereinbefore specially provided for, the Right to fix the Lord Ordinary and Division of the Court to which any Process of Suspension, or Suspension and Interdict, or Advocation, shall belong, shall remain as at the Date of the passing of this Act.

XXXIV. And be it enacted, That where any Note of Advocation shall be presented on juratory Caution it shall be incumbent on the Advocator to make immediate Application to the Lawyers for the Poor, for a Report that he has a *probabilis Causa litigandi*, and if the Advocator shall fail to make such Application, or if the Lawyers for the Poor shall upon such Application report their Opinion that no *probabilis Causa* has been established, the Advocation shall be dismissed with Expenses, unless full Caution be forthwith offered and found in common Form.

XXXV. And be it enacted, That it shall be competent to the Judges of either Division of the Court in any Cause in which they shall be equally divided in Opinion to direct such Cause to be judged by the Inner House Judges of both Divisions, and to appoint such Cause to be heard by such Inner House Judges, either on any Sederunt Day during Session, or at any Time during the Sitzings of the Lords Ordinary, either before or after the Sitzings of the Two Divisions of the Court for the Winter Session; and such Cause shall thereupon be so heard and judged by the Judges of the Division of the Court before which the same depends, with the Addition of Three Judges of the other Division of the Court; and the Judgment shall in all Causes be pronounced according to the Opinion of the Majority of the Judges present, and the Interlocutor shall bear to be the

*Advocations.  
Consultation.*

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Advocations on juratory Caution not to be proceeded with where there is no *probabilis Causa*.  
*A. of S.* 24 Dec. 1838, § 4.  
*As to Poor's Roll,*  
*see A. of S.* 21 Dec. 1842.

Provision as to one Division of the Court consulting the other.

*Am.* 6 G. 4, c. 120, § 23, and previous Enactments.

Jury Procedure.

Procedure in Jury Causes to be the same, so far as is applicable, as in other Court of Session Causes.

*Ext. 1 W. 4, c. 69, § 1, 2.*

*See A. of S. 16 Feb. 1841; 10 July 1844; 24 Feb. 1846; 18 July 1850; 22 June 1859.*

Offices of Issue Clerk and Jury Clerk abolished.

Procedure for the Adjustment of Issues.

*Rep. 6 G. 4, c. 120, § 84.*

*See 55 G. 3, c. 42, § 1.*

Reporting Issues.

*Am. by 20 & 21 V., c. 56, § 8.*

Judgment of the Division before which the Cause depends, after consulting with the other Division of the Court; but the Lord Justice General shall always be the presiding Judge whenever his Lordship sits as a Member of the Court.

XXXVI. And be it enacted, That in all Causes appropriated for Trial by Jury, or in the course of Preparation for Trial by Jury, before the Court of Session, the Procedure, both before and after the closing of the Record, shall be in all respects the same, so far as applicable, as in other Court of Session Causes for the Time being, except in so far as it may be otherwise provided by this Act, or by any Act of Sederunt to be passed by the said Court under the Powers by this Act conferred.

XXXVII. And be it enacted, That the Offices of Issue Clerk and Jury Clerk be and the same are hereby abolished; and in future all the Duties hitherto performed by an Issue Clerk or Jury Clerk, or by any Person acting as an Issue Clerk or Jury Clerk, and still remaining to be performed, after the Date at which this Act shall take Effect may be performed by any Clerk of Session, either in the Inner or Outer House; and each Clerk of Session shall, so far as relates to all the Causes appropriated or in the course of Preparation for Trial by Jury in or connected with his own Office, or depending before the Lord Ordinary or Division of the Court to which he is attached, be charged with all the Duties hitherto performed by an Issue Clerk or Jury Clerk, or by any Person acting as an Issue Clerk or Jury Clerk, and remaining to be performed as aforesaid.

XXXVIII. And be it enacted, That where in the course of any Cause before the Court of Session Matter of Fact is to be determined, and an Issue is to be adjusted with reference thereto, it shall be the Duty of the Pursuer to prepare and lodge in Process the Issue he proposes, and it shall be the Duty of the Defender to prepare and lodge in Process any counter Issue required by the Nature of his Defence; and the Lord Ordinary before whom such Cause depends, after causing Issues to be prepared and lodged as aforesaid, shall forthwith appoint Parties to attend him at Chambers, or shall order the Case to the Roll, for the Adjustment of an Issue or Issues for the Trial of such Cause, or of such Matter of Fact arising therein as is to be determined by Jury Trial; and if such Issue or Issues be not adjusted and settled with the Consent of Parties at the Meeting or Enrolment so fixed, or at a second such Meeting or Enrolment for the same Purpose, if such second Meeting or Enrolment shall be appointed by the Lord Ordinary, the Lord Ordinary shall immediately

XXXVIII. Campbell, 15 Feb. 1851, 18 D. 701.—Holehouse, 21 May 1854, 15 D. 665.—Hoyle, 21 Nov. 1857, 20 D. 70.—Ritchie, 30 Nov. 1860.



report the Matter to the Inner House, by whom such Issue or Issues shall, upon such Report, be adjusted and settled.

XXXIX. And be it enacted, That it shall not be necessary to engross any Issue or Issues with a view to Trial by Jury, but such Issue or Issues, when adjusted and settled as aforesaid by the Lord Ordinary or the Court, shall at the same Time be approved by Interlocutor to that Effect, and shall be signed and authenticated by the Judge as relative thereto, which Proceeding shall be equivalent to Engrossment as at present practised.

XL. And be it enacted, That where an Issue or Issues is or are approved as aforesaid it shall be competent to the Lord Ordinary in the Cause, on the Motion of either of the Parties, to appoint a Time and Place for the Trial of such Issue or Issues, such Time being as soon after the Date of such Approval as with reference to the proper Trial of such Issue or Issues conveniently may be, and, except upon special Cause shown, not later than Three Weeks from the Date of such Motion; and such Trial shall proceed at the Time and Place so appointed, unless at the Time of such Appointment One or other of the Parties shall intimate to the Lord Ordinary that he objects thereto, in which Case the Lord Ordinary shall report the Matter to the Court, by whom it shall be fixed when and where the Trial shall proceed.

XLI. And be it enacted, That, unless where some different Arrangement shall be made by the Court, upon Motion to that Effect, the Lord Ordinary before whom the Cause depends shall preside at the Trial of such Issue or Issues in all Cases where such Trial shall take place during the Sitting of the Court.

XLII. And be it enacted, That all the Powers and Duties in regard to the summoning of Juries for the Trial of Issues in Civil Causes at present exercised or performed by the Court of Session, or by any Division of the said Court, or by any Clerk or Clerks in Jury Causes, may be competently exercised and performed by any Lord Ordinary, or by any Clerk of Session officiating either in the Outer or Inner House; and it shall be lawful for any Lord Ordinary, in any Cause depending before the Court of Session, on the Application of either of the Parties, to appoint any Issue or Issues in such Cause to be tried by a special Jury.

XLIII. And be it enacted, That a Copy of the Interlocutor fixing the Trial, certified by the Clerk to the Process

#### *Jury Procedure.*

Engrossment of Issues abolished.

*See Supra*, § 5.

On Issues being approved of, Time and Place of Trial to be fixed.

*Est. 1 W. 4, c. 69, § 2, 3, 5, 6, 9. A. of S. 16 Feb. 1841, § 10-13.*

*Practical Forms. A. of S. 3 July 1823.*

*Appeal. 55 G. 3, c. 42, § 4; 59 G. 3, c. 85, § 15.*

Lord Ordinary in the Cause to preside at Trial during Session.

*Supra*, § 40.

*See 20 & 21 V., c. 56, § 8.*

Lord Ordinary, etc., to have Power to summon Jury, and to appoint Cause to be tried by a special Jury.

*Am. 55 G. 3, c. 42, § 20, 24.*

Certified Copy of the Interlocutor fixing the Trial to be the Warrant for citing Witnesses.

XL. Steel, 6 June 1854, 16 D. 898.—Faulks, 17 June 1854, 16 D. 968.—A. B. 16 March 1855, 17 D. 759.—Shiells, 17 July 1856, 18 D. 1801.—Carron Co. 7 Feb. 1857, 19 D. 884.—Halliday, 27 June 1857, 19 D. 929.—Lauder, 21 Nov. 1857, 20 D. 71.—Welsh, 6 Feb. 1858, 20 D. 518.—Moffat, 7 Jan. 1859, 21 D. 212.—Kerr, 26 May 1858, 20 D. 959.—M'Laren, 22 Dec. 1859, 22 D. 278.—Hutchison, 15 May 1860, 22 D. 1068.

*Trial by Lord Ordinary.*

*Am.* 55 G. 3, c. 42,  
§ 16; 59 G. 3, c.  
35, § 28.  
*See* 17 & 18 V., c.  
34, § 1.

Counsel for each  
Party to be heard  
after Evidence  
closed.

*Restriction of Bills of Exceptions.*

*Am.* 55 G. 3, c. 42,  
§ 7; 59 G. 3, c. 35,  
§ 17; 7 W. 4, c. 14.

Lord Ordinary  
may try Issues of  
Consent without a  
Jury.

*Infra*, § 47, 48.

*Report.*

*Infra*, § 51.

*Appeal.*

6 G. 4, c. 120, § 14.

or by his Assistant, shall be a sufficient Warrant to any Messenger at Arms to cite Witnesses and Havers to the said Trial, either for the Pursuer or Defender.

XLIV. And be it enacted, That in every Trial of Issues in a Cause before the Court of Session, and subject to such Regulations in regard to opening the Case on the Part of the Pursuer and Defender as the Court may establish, One Counsel for the Pursuer and One Counsel for the Defender shall be heard, in their Order, after the whole Evidence in the Cause is closed.

XLV. And be it enacted, That a Bill of Exceptions shall not be allowed in any Cause before the Court of Session, upon the Ground of the undue Admission of Evidence, if in the Opinion of the Court the Exclusion of such Evidence could not have led to a different Verdict than that actually pronounced; and it shall not be imperative on the Court to sustain a Bill of Exceptions, on the Ground of the undue Rejection of documentary Evidence, when it shall appear from the Documents themselves that they ought not to have affected the Result at which the Jury by their Verdict have arrived.

XLVI. And be it enacted, That if the Parties in any Cause before the Court of Session in which an Issue has been adjusted shall consent to the Lord Ordinary before whom such Cause depends trying such Issue without a Jury, such Lord Ordinary shall, unless the Court, on the Report of such Lord Ordinary, shall deem it inexpedient and improper, try such Issue without a Jury accordingly; and whenever any Issue shall be tried by a Lord Ordinary without a Jury, such Lord Ordinary shall take Notes of the Evidence, and shall hear Counsel thereon, and otherwise the Proceedings shall be conducted continuously and as nearly as may be as in an ordinary Jury Trial; and within Eight Days after the Proceedings at the Trial are concluded such Lord Ordinary shall pronounce an Interlocutor, in which he shall state specifically what he finds in point of Fact; and it shall be competent to either Party, by written Note, within Eight Days from its Date, to bring such Interlocutor of the Lord Ordinary under Review of the Lord Ordinary upon his own Notes of Evidence, who shall forthwith hear Parties thereon; and it shall be competent to the Lord Ordinary, upon such Review, and within Eight Days after hearing Parties, either to correct his Interlocutor as regards such Findings in Fact or to order a new Trial, as he may think fit: Provided always, that if either of such Periods of Eight Days extends

XLV. Cameron, 21 Dec. 1850, 18 D. 412.

XLVI. Allan, 20 June 1855, 17 D. 969.—Buchanan, 11 March 1857, 19 D. 716. (See § 48.)

into Vacation or Recess, such Period shall not be held to elapse till the Fourth Day after the next Meeting of the Lords Ordinary or the Court thereafter.

XLVII. And be it enacted, That unless it shall appear that such Findings in point of Fact by such Lord Ordinary proceeded on some erroneous View of the Law, as to Competency of Evidence or otherwise, such Findings in Fact shall be final; but it shall be competent to either of the Parties to raise, on a Reclaiming Note to the Inner House, any Question of Law which may be relevantly raised upon the Evidence as appearing in the Notes of such Lord Ordinary taken as aforesaid; and no Objection to any Finding in point of Law by such Lord Ordinary during the Proceedings at the Trial shall be competent unless such Objection was stated, and noted by the Lord Ordinary at the Time of such Finding; and the Notes of the Lord Ordinary shall be referred to for no other Purpose than to decide such Questions of Law: Provided always, that any Appeal which may be entered to the House of Lords against any Interlocutor which may be pronounced by the Inner House on any such Question of Law shall be subject to the same Regulations and entitled to the same Privileges in all respects as Appeals against Interlocutors or Judgments upon Bills of Exceptions are at present subject and entitled to.

XLVIII. And whereas Cases may arise in which it is desirable that Questions of Fact should be investigated without Trial by Jury or Proof on Commission: Be it enacted, That in any Cause before the Court of Session it shall be competent to the Lord Ordinary before whom such Cause depends, without adjusting an Issue or Issues, to pronounce an Interlocutor, stating distinctly any such Question or Questions to which the Parties are to address their Proof, and appointing such Question or Questions for Trial by himself, without a Jury; and the Proof to be adduced by the Parties shall in such Case be limited to the Points so stated, and shall proceed at such Time and Place as shall be appointed, unless on Review of such Interlocutor it shall appear to the Court that such Course of Procedure is not in the Circumstances of the Case expedient, or the Interlocutor be otherwise altered by the Court; and the Lord Ordinary shall find on each such Question separately, and his Findings on such Questions shall be final, subject always to such Review, Correction, and Objections as would have been competent thereagainst under this Act if the Cause had been tried by such Lord Ordinary on Issues.

*Trial by Lord Ordinary.*

Lord Ordinary's Findings in Fact shall be final unless reclaimed against.

Proviso as to Appeals on Questions of Law.

See 56 G. 3, c. 42, § 7; 59 G. 3, c. 35, § 17.

Lord Ordinary may try special Facts without a Jury.

*Review.*  
*Supra*, § 11.

*Appeal.*  
6 G. 4, c. 120, § 14.

*Review of Findings.*  
*Supra*, § 46, 47.

*Appeal.*  
56 G. 3, c. 35, § 7.

XLVII. Balfour, 9 July 1854, 16 D. 1028.—Allan, 20 June 1855, 17 D. 969.—Hansen, 16 July 1858, 20 D. 1306.—Turnbull, 24 June 1859, 21 D. 1021.

XLVIII. Vaughan, 10 June 1854, 16 D. 922.—Rankine, 9 Feb. 1855, 17 D. 363.—Buchanan, 11 March 1857, 19 D. 716.—Hansen, 16 July 1858, 20 D. 1806.

*Proof on Commission, etc.*

Lord Ordinary may take the Evidence by Commission, except in the enumerated Causes. *Am.* 59 G. 3, c. 85, § 13. *Ext.* by 22 V., c. 20, § 1, etc. *A. of S.* 11 July 1828, § 117; 11 March 1800.

*Appeal.*

6 G. 3, c. 120, § 14.

*Appropriated Actions.*

*Am.* 6 G. 4, c. 120, § 28.

Parties may choose their own Jury.

*Exceptions.*

*Supra*, § 44.

*New Trial.*

55 G. 3, c. 42, § 6, 8, 9; 59 G. 3, c. 85, § 16.

Reports by Lords Ordinary to be verbal.

*Ext.* 6 G. 4, c. 120, § 19.

*Supra*, § 14, 38.

Compensation.

XLIX. And be it enacted, That in any Cause before the Court of Session, not falling within the Causes specially enumerated in the said recited Act passed in the Sixth Year of the Reign of his Majesty King George the Fourth as appropriate to be tried by Jury, it shall be competent to the Lord Ordinary before whom such Cause depends, with the Consent of both Parties or upon the Motion of One Party, with the Leave of the Inner House obtained upon the Report of the Lord Ordinary, or to the Court when the Cause comes in to the Inner House, to appoint the Evidence in such Case, or any Portion of such Evidence, to be taken by Commission: Provided always, that it shall be competent for the Court to allow Proof on Commission in any of such enumerated Causes where the Action is not an Action for Libel or for Nuisance, or properly and in Substance an Action of Damages.

L. And whereas it is expedient to extend the Benefits of Arbitration: Be it enacted, That if the Parties in any Cause before the Court of Session in which an Issue is to be tried shall consent to refer the same to any One Arbitrer, or to any Three, Five, or Seven Arbitrers, it shall be lawful for the Court or the Lord Ordinary, and the Court or Lord Ordinary is hereby required to allow such Arbitrer or Arbitrers to be sworn and to sit as a Jury to try such Issue; and such Arbitrer or Arbitrers, or the major Part of their Number in the event of Difference of Opinion, shall have all the Powers of a unanimous Jury; and the Proceedings of such Trial shall be conducted, as far as may be, as in any ordinary Case of Trial by Jury, either Party being entitled to take Exceptions, and to move for new Trial, as in any ordinary Case: Provided always, that it shall not be competent to either Party to object to the Verdict, or to move for new Trial, in respect of the Verdict being against Evidence, or on any other Ground implying Miscarriage on the Part of the Jury alone: Provided also, that the Court, in the event of granting a new Trial, shall direct the new Trial to proceed before the same Arbitrer or Arbitrers, if able to try the Cause, and the new Trial shall in that Case proceed before the same Arbitrer or Arbitrers accordingly.

LI. And be it enacted, That where by the Provisions of this Act anything may be done upon Report of a Lord Ordinary to One or other of the Divisions of the Court, the same may be done summarily by a simple verbal Report, to be made by such Lord Ordinary to such Division.

LII. And be it enacted, That it shall be lawful for any Clerk or Officer of the Court of Session or other Court, entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act, to make Application to the

*Miscellaneous.*

Commissioners of her Majesty's Treasury for Compensation, giving at the same Time Notice of such Application to her Majesty's Advocate for *Scotland*; and it shall be lawful for the said Commissioners of the Treasury to investigate such Claim, and call for such Evidence in relation thereto, as they may think necessary; and upon such Claim being established to their Satisfaction the said Commissioners are hereby authorized and empowered, out of such Monies as Parliament shall hereafter provide, to award to such Person such Compensation as they shall, under all the Circumstances of the Case, and having reference to the Nature of the Appointment and the Duration of the Service, think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Thirty Days from the Day on which the same shall be granted, if Parliament shall be then sitting, and if not, then within Thirty Days after the then next Sitting of Parliament; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that it shall be a Condition of every such Grant that the Compensation so granted, in the event of the Appointment thereafter of any of the said Persons to any Office of Profit or Emolument under the Crown, shall abate or wholly cease during the Period in which such Person shall hold such Office, so as that the Compensation and Emolument thereof, taken together, shall not exceed the Emoluments of the Office in respect of which the Compensation has been granted.

LIII. And be it enacted, That in construing this Act the Expression "Clerk of Session" shall include Principal Clerk of Session, Depute Clerk of Session, and Assistant Clerk of Session, both in the Inner and Outer House; the Word "Pursuer" shall include Complainer, and the Word "Defender" shall include Respondent. -

Interpretation of  
Terms.

LIV. And be it enacted, That the Court of Session shall be and the said Court is hereby empowered, from Time to Time, from and after the passing of this Act, to make such Regulations, by Act or Acts of Sederunt, as the said Court may deem meet for carrying into effect the Purposes of this Act, and also to make Regulations substituting such Services or Notices as the Court may deem meet in lieu of Actions of Transference as at present in Use, and also to make Regulations for allowing Summonses and Notes of Advocation and of Suspension, and of Suspension and Interdict, and of Suspension and Liberation, to be called at any Box Day in Vacation or Recess, and making Defences returnable at such

Court of Session  
may make Regula-  
tions by Acts of  
Sederunt.

Miscellaneous.

Box Days, or on the Meeting of the Lords Ordinary, or of the Court after Vacation or Recess; and the said Court may meet for the above Purposes during Vacation as well as during Session, and may alter and amend such Regulations from Time to Time: Provided always, that within Fourteen Days from the Commencement of every future Session of Parliament there shall be transmitted to both Houses of Parliament Copies of all Acts of Sederunt made and passed under the Powers hereby given.

Commencement of Act.

LV. And be it enacted, That, excepting in so far as regards the Power hereinbefore given to the Court of Session to pass Acts of Sederunt, this Act shall take effect from and after the First Day of *November* One thousand eight hundred and fifty: Provided always, that it shall be competent to the said Court, from and after the passing of this Act, to make any Order in any existing Cause, to take effect at and from the said First Day of *November* One thousand eight hundred and fifty.

Recited Acts, etc., repealed in so far as at variance with this Act.

LVI. And be it enacted, That the said recited Acts, and all Laws, Statutes, Acts of Sederunt, and Usages, shall be and the same are hereby repealed, in so far only as they may be in any respect inconsistent or at variance with the Provisions of this Act.

Act may be amended, etc.

LVII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

## SCHEDULES TO WHICH THIS ACT REFERS.

### SCHEDULE (A.)

#### No. 1.

#### FORM OF AN ORDINARY PETITORY SUMMONS.

*Victoria*, by the Grace of God of the United Kingdom of *Great Britain and Ireland* Queen, Defender of the Faith: To Messengers at Arms, Our Sheriffs in that Part, conjunctly and severally, specially constituted, Greeting: Whereas it is humbly meant and shewn to Us by Our Lovite *A.* [*insert Name and Designation*], Pursuer, against *B.* [*insert Name and Designation*], Defender, in Terms of the Condescendence and Note of Pleas in Law hereunto annexed: Therefore the Defender ought and should be decerned and ordained, by Decree of the Lords of Our Council and Session, to make Payment to the Pursuer of the Sum of Sterling, [*where any liquid Document of Debt is libelled on, whether Bond, Bill, or other Document, as the Case may be, set it forth here, as shortly as possible, describing it merely by its Date, and the Names of the Parties by and to whom granted.*] with the legal Interest thereof from the Day of until Payment, together with the Sum of Sterling, or such other Sum as Our said Lords shall modify as the Expenses of the Process to follow hereon, conform to the Laws and daily Practice of Scotland used and observed in the like Cases, as is alleged: Our Will is

Herefore, *etc.* [insert the Will in common Form, down to the Words, "Given under our Signet at Edinburgh," inclusive].

[To be signed on each Page by a Writer to the Signet, and signeted in common Form.]

#### CONDESCENDENCE.

[State articulately the Allegations in Fact which form the Ground of Action.]

#### NOTE OF PLEAS IN LAW.

[State them articulately.]

In respect whereof, *etc.*

[To be signed on each Page by the same Writer to the Signet who signs the above.]

#### No. 2.

#### FORM OF A SUMMONS OF COUNT AND RECKONING AND PAYMENT.

*Victoria, etc.* [as before]: Whereas, *etc.* [as before]: Therefore the Defender ought and should be decerned and ordained, by Decree of the Lords of Our Council and Session, to exhibit and produce before Our said Lords a full and particular Account of his whole Intromissions as Factor for the Pursuer [or otherwise, as the Case may be], whereby the true Balance due by him to the Pursuer may appear and be ascertained by Our said Lords: And the Defender ought and should be decerned and ordained, by Decree foresaid, to make Payment to the Pursuer of the Sum of Sterling, or of such other Sum as shall appear and be ascertained by Our said Lords to be due by the Defender as the Balance of his said Intromissions, with the legal Interest thereof from the Day of until Payment; or, in the event of the Defender failing to produce an Account as aforesaid, he ought and should be decerned and ordained, by Decree foresaid, to make Payment to the Pursuer of the Sum of Sterling, which shall in that Case be held to be the Balance of his said Intromissions, with the legal Interest thereof from the said Day of until Payment; and, whether the said Account is produced or not, the Defender ought and should be decerned and ordained, by Decree foresaid, to make Payment to the Pursuer of the Sum of Sterling, *etc.* [insert Conclusion for Expenses, as before]: Our Will is Herefore, *etc.* [insert the Will in common Form, as before].

[To be signed and signeted as before.]

#### No. 3.

#### FORM OF A SUMMONS OF DECLARATOR OF TRUST.

*Victoria, etc.* [as before]: Whereas, *etc.* [as before]: Therefore it ought and should be found and declared, by Decree of the Lords of Our Council and Session, that a Disposition dated whereby, for the Causes therein specified, the Pursuer sold, alienated, and disposed to the Defender, and his Heirs and Assignees whomsoever, heritably and irredeemably, all and whole the Lands of was a Trust in the Person of the Defender, for the Use and Behoof of the Pursuer, and his Heirs or Assignees: And the Defender ought and should be decerned and ordained, by Decree foresaid, to denude of the said Lands, and to convey the same, with the Writs and Evidents thereof, to the Pursuer, and his Heirs and Assignees, with Warrantice from the Defender's own Facts and Deeds [insert Conclusion for Expenses and Will, as before].

[To be signed and signeted as before.]

## No. 4.

## FORM OF A SUMMONS OF REDUCTION.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To Messengers at Arms, Our Sheriffs in that Part, conjunctly and severally, specially constituted, Greeting: Our Will is, *etc.* [*take in Will of Summons in common Form, down to the Statement of the Reasons; then say*] for the Reasons and Causes set forth in the Condescendence and Note of Pleas hereunto annexed: Therefore, and for other Reasons to be proposed at discussing hereof, the said last Will and Testament [*or other Document sought to be reduced, as the Case may be*], with all that has followed or may follow on the same, ought and should be reduced, retreated, rescinded, cassed, annulled, decerned, and declared, by Decree of Our said Lords, to have been from the Beginning, to be now and in all Time coming, null and void, and of no Avail, Force, Strength, or Effect, in Judgment or outwith the same in Time coming, and the Pursuer reponed and restored thereagainst in integrum: And the Defender ought and should be decerned and ordained, by Decree foresaid, to make Payment to the Pursuer of the Sum of Sterling [*insert Conclusion for Expenses, as before*], or else to allege a reasonable Cause in the contrary: With Certification to the Defender, if he fail, Our said Lords will proceed in the said Matter, and reduce, decern, and declare in Manner foresaid: According to Justice, *etc.* [*According to usual Form, as before.*]

[*To be signed and signeted as before.*]

## No. 5.

## FORM OF A SUMMONS OF MULTIPLEPOINDING.

Victoria, *etc.* [*as before*]: Whereas it is humbly meant and shown to us by Our Lovite A. [*insert Name and Designation*], Pursuer, against B. [*insert Name and Designation*], common Debtor, and C., D., and E. [*insert Names and Designations of each in order, and state who is the real Raiser*], Creditors or pretended Creditors of the said B., all Defenders, in Terms of the Condescendence and Note of Pleas in Law hereunto annexed: Therefore it ought and should be found and declared, by Decree of the Lords of Our Council and Session, that the Pursuer is only liable in once and single Payment of the principal Sum of Sterling contained in a Bond dated granted by him to the said B., his Heirs, Executors, or Assignees, and Interest thereon from the Day of until Payment, or until Consignation in this Process, and that to the Person or Persons who may have just Right thereto: for determining which the said several Persons, Creditors or pretended Creditors foresaid, and the said B., common Debtor, for his Interest, and all others pretending Right thereto, ought to produce their respective Grounds of Debt and Diligences thereon or other Interest in the said Sum, and dispute their Preferences thereto: And the Pursuer should be found entitled to retain the Expenses of this Process as the same shall be ascertained in the course thereof, and decerned and ordained to make Payment of what Sum shall remain in his Hands after such Retention to such of the Defenders or others as may be found to have best Right thereto: And the Defenders who shall be found to have no Right to the Sums in medio, and all others, ought and should be decerned and ordained, by Decree foresaid, to desist and cease from further troubling the Pursuer with respect to the Premises in Time coming, conform to the Laws and daily Practice of Scotland used and observed in the like Cases, as is alleged. Our Will is Herefore, *etc.* [*insert the Will in common Form, as before*].

[*To be signed and signeted as before.*]

## SCHEDULE (B.)

This Summons [*or Note of Suspension, or Note of Suspension and Interdict, or Note of Suspension and Liberation, or Note of Advocation*], executed [*or intimated*] by me



[insert Name], Messenger at Arms, against [or to] [insert Name or Names], Defender  
 [or Defenders, or Respondent or Respondents] [state whether personally or otherwise], in  
 Presence of [insert Name and Designation of Witness], this Day of  
 Eighteen hundred and Years.

[Signature of Messenger.]

C. D., Witness.

## 15° & 16° VICTORIÆ REGINÆ.

### CAP. LXXXIII.

*An Act for amending the Law for granting Patents for  
 Invention.*—[1st July 1852.]

§ XLIII. In taxing the Costs in any Action in any of her Majesty's superior Courts at *Westminster* or in *Dublin*, commenced after the passing of this Act, for infringing Letters Patent, regard shall be had to the Particulars delivered in such Action, and the Plaintiff and Defendant respectively shall not be allowed any Costs in respect of any Particular unless certified by the Judge before whom the Trial was had to have been proved by such Plaintiff and Defendant respectively, without regard to the general Costs of the Cause; and it shall be lawful for the Judge before whom any such Action shall be tried to certify on the Record that the Validity of the Letters Patent in the Declaration mentioned came in question; and the Record, with such Certificate, being given in Evidence in any Suit or Action for infringing the said Letters Patent, or in any Proceeding by *scire facias* to repeal the Letters Patent, shall entitle the Plaintiff in any such Suit or Action, or the Defendant in such Proceeding by *scire facias*, on obtaining a Decree, decretal Order, or final Judgment, to his full Costs, Charges, and Expenses, taxed as between Attorney and Client, unless the Judge making such Decree or Order, or the Judge trying such Action or Proceeding, shall certify that the Plaintiff or Defendant respectively ought not to have such full Costs: Provided always, that nothing herein contained shall affect the Jurisdiction and Forms of Process of the Courts in *Scotland* in any Action for the Infringement of Letters Patent, or in any Action or Proceeding respecting Letters Patent, hitherto competent to the said Courts: Provided also, that when any Proceedings shall require to be taken in *Scotland* to repeal any Letters Patent, such Proceedings shall be taken in the Form of an Action of Reduction at the Instance of her Majesty's Advocate, or at the Instance of any other Party having Interest with Concurrence of her Majesty's Advocate, which Concurrence her Majesty's Advocate is authorized and empowered to give upon just Cause shown only.

Particulars to be  
 regarded in Taxa-  
 tion of Costs.

*Advocation.  
Inner House.*

16° & 17° VICTORIÆ REGINÆ.

CAP. LXXX.

[*Sheriff Court Act,  
1853.*]

*An Act to facilitate Procedure in the Sheriff Courts in  
Scotland.*—[15th August 1853.]

Judgment of  
Sheriff in Causes  
not exceeding L.25  
to be final.  
*Am.* 50 G. 3,  
c. 112, § 28.  
*Am. St.* 1668, c. 9.  
*Infra*, § 26.

Causes of any  
Value may be  
tried in a sum-  
mary Way by  
Consent of all the  
Parties.  
7 W. 4 & 1 V.,  
c. 41, § 81.  
*Infra*, § 26.

In Cases exceed-  
ing L.25, Review  
limited to final  
Judgments, etc.

*See* 1 & 2 V., c. 114,  
§ 21 (*Rep. ?*)

50 G. 3, c. 112.  
*Id.*, § 86, not rep.  
as to Incompetency  
and Contingency.

6 G. 4, c. 120.  
*Id.*, § 40, not rep.  
*See Id.*, as to  
*Appeal*.

Where either  
Party desires it,  
Case to go at once  
to the Inner  
House.  
*Ex.* 13 & 14 V.,  
c. 86, § 82.  
*As to Record*,  
*Id.*, § 9. *A. of S.*  
11 July 1828,  
§ 49, 62.  
*As to Procedure*,  
6 G. 4, c. 120, § 40.

§ XXII. It shall not be competent, except as hereinafter specially provided for, to remove from a Sheriff Court, or to bring under Review of the Court of Session, or of the Circuit Court of Justiciary, or of any other Court or Tribunal whatever, by Advocation, Appeal, Suspension, or Reduction, or in any other Manner of Way, any Cause not exceeding the Value of Twenty-five Pounds Sterling, or any Interlocutor, Judgment, or Decree pronounced or which shall be pronounced in such Cause by the Sheriff.

§ XXIII. It shall be competent in all Civil Causes above the Value of Twelve Pounds, competent before the Sheriff, for the Parties to lodge in Process a Minute, signed by themselves or by their Procurators, setting forth their Agreement that the Cause should be tried in the summary Way provided in the said first recited Act, and the Sheriff shall thereupon hear, try, and determine such Action in such summary Way, and in such Case the whole Powers and Provisions of the said first recited Act shall be held applicable to the said Action: Provided always, that the Parties, or any of them, shall be entitled to appear and plead by a Procurator of Court.

§ XXIV. It shall be competent, in any Cause exceeding the Value of Twenty-five Pounds, to take to review of the Court of Session any Interlocutor of a Sheriff sisting Process, and any Interlocutor giving interim Decree for Payment of Money, and any Interlocutor disposing of the whole Merits of the Cause, although no Decision has been given as to Expenses, or although the Expenses, if such have been found due, have not been modified or decreed for; but it shall not be competent to take to review any Interlocutor, Judgment, or Decree of a Sheriff, not being an Interlocutor sisting Process, or giving interim Decree for Payment of Money, or disposing of the whole Merits of the Cause as aforesaid; and the Provisions of an Act passed in the Fiftieth Year of the Reign of his Majesty King George the Third, intituled, *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*, and also the Provisions of an Act passed in the Sixth Year of the Reign of his Majesty King George the Fourth, intituled, *An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland*, are, in so far as inconsistent with this Enactment, hereby repealed: Provided always, that when any Interlocutor shall be brought under Review of the Court of Session, it shall be competent for that Court also to review all the previous Interlocutors pronounced in the Cause.

§ XXV. All Cases of Advocation which shall come to depend before the Court of Session may be brought in the first Instance before One or other of the Divisions of the Court of Session, or by Consent of both Parties before any Lord Ordinary in the Outer House, in which last Case the Judgment to be pronounced by such Lord Ord-

XXII. Hopkirk, 21 Dec. 1855, 18 D. 299.—Ingles, 17 May 1859, 21 D. 822.—Great North of Scotland Ry. Co. 8 Oct. 1860 (on Circuit).

XXIV. Lyall, 5 July 1859, 21 D. 1136.

XXV. Balfour, 27 Jan. 1854, 16 D. 413.—Young, 8 June 1859, 21 D. 928.

nary shall be final, and shall not be subject to Review by the Inner House, or by Appeal to the House of Lords.

§ XXVI. And with respect to Small Debt Cases not exceeding Twelve Pounds:

The Provisions of the said first recited Act shall be extended to all Causes, Prosecutions, Applications for Sequestration and Sale, and other Actions and Proceedings of the Nature set forth in the said first recited Act, wherein the Debt, Demand, or Penalty in question, or the Fund in medio, shall not exceed the Value of Twelve Pounds, exclusive of Expenses and Fees of Extract; and the said first recited Act shall be read and construed as if the Words "Twelve Pounds" were substituted for the Words "Eight Pounds Six Shillings and Eightpence," wherever these latter Words occur in the said first recited Act: Provided always, that in any Case in which a Decree pronounced by the Sheriff in the Small Debt Court for any Sum exceeding Eight Pounds Six Shillings and Eightpence shall have been put to Execution by Imprisonment, the Party so imprisoned shall be entitled to bring such Decree under Review of the Sheriff by way of Suspension and Liberation, and such Suspension and Liberation shall proceed in the Form provided for summary Petitions by this Act.

§ XXXII. And whereas it is desirable that the Jurisdiction of the Sheriff should be extended to Questions relating to Nonpayment of Feu Duties for real Subjects of small Amount, wherever, in Subjects not exceeding in yearly Value the Sum of Twenty-five Pounds, the Vassal shall have run in arrear of his Feu Duty for Two Years: It shall be competent for the Superior to raise an Action before the Sheriff, in ordinary Form, setting forth that the Subject is of the Value, and that the Feu Duty has run in arrear as aforesaid, and concluding that the Vassal should be removed from his Possession, and that Warrant to that Effect should be granted, and thereafter the Cause shall proceed in the Manner herein provided in ordinary Actions; and if the Defendant shall fail to appear, or if it shall be proved to the Sheriff by such Evidence as he may require that the Subject is of the Value, and that the Feu Duty is in arrear as aforesaid, he shall grant Warrant in Terms of the Conclusions of the Summons, which Warrant shall be executed at the first Term of Whitsunday or Martinmas, which shall first occur, Four Months after the same is issued by the Sheriff, and such Warrant, so executed, shall have the Effect, in relation to the said Possession, of a Decree of Irritancy ob non solutum Canonem: Provided always, that it shall be competent to the Vassal, at any Time within One Year from the Date of such Removal, to raise an Action of Declarator in the Court of Session for Vindication of such Subject on any Ground proceeding on Challenge of the Title of the Superior, which shall not be called in question before the Sheriff except on Grounds instantly verified by the Titles of the Superior, and that it shall be competent to the Vassals, at any Time before such Warrant is executed, to purge the Irritancy incurred by Payment of the Arrears pursued for with the Expenses incurred by the Superior in such Proceedings; provided also, that in Leases for a longer Endurance than Twenty-one Years, the Landlord shall have the like Remedies against his Tenant, in case of the Nonpayment of Rent, mutatis mutandis, that are hereby given to the Superior against his Vassal.

§ XLVIII. No Person whatsoever shall be exempt from the Jurisdiction of the Sheriff Court, in any Cause, on account of Privilege by reason of being a Member of the College of Justice.

#### *Jurisdiction.*

Small Debt Jurisdiction extended to Causes not exceeding L.12.

7 W. 4 & 1 V., c. 41. See § 80, 81. See 20 G. 2, c. 48, § 84, 85. *Supra*, § 28.

See § 7 of this Act.

Arrears of Feu Duties for Subjects of small Amount may be sued for in Sheriff Court.

See 50 G. 3, c. 112, § 28.

Privilege of Members of College of Justice abolished. *Am.* 1672, c. 16, § 16; 50 G. 3, c. 112, § 28. *Ext.* 13 & 14 V., c. 86, § 17.

*Procedure*

16° &amp; 17° VICTORIÆ REGINÆ.

CAP. XCIV.

[Second Entail Amendment Act, 1853. See 11 & 12 V., c. 36; 6 & 7 W. 4, c. 42; 10 G. 3, c. 51; 5 G. 4, c. 87.]

See St. 1685, c. 22.

Forms of Procedure under recited Act and this Act merely directory.

*An Act to extend the Benefits of the Act of the Eleventh and Twelfth Years of her present Majesty, for the Amendment of the Law of Entail in Scotland*—[20th August 1853.]

§ I. No Interlocutor, Judgment, or Decree following or that has followed upon any Petition presented or which shall be presented under the said recited Act or this Act shall be questionable or reducible upon the Ground of any Want of Compliance with the Provisions of the said recited Act and of this Act, and of any relative Act or Acts of Session which have been or shall be passed by the Court of Session in Scotland, in so far as such Provisions regard Applications or Petitions to the Court of Session under the Authority of the said recited Act or of this Act, the Matters to be set forth in such Applications or Petitions, the Intimation and Service, and Advertisement thereof, the Persons to be called as Parties thereto, and the Mode of calling them, the making and producing of Affidavits therein, the Matters to be set forth in such Affidavits, and generally the Procedure under such Applications or Petitions: Provided always, that no Injury shall have been suffered by any Person through such Want of Compliance; provided also, that nothing herein contained shall be held to support or validate any Interlocutor, Judgment, or Decree as aforesaid obtained or which may be obtained without the requisite Consents prescribed by the said recited Act, or without Service of the Petition upon any Party expressly required by the said recited Act to be called in the Application, or shall be held to support or validate any Interlocutor, Judgment, or Decree as aforesaid, in so far as such Interlocutor, Judgment, or Decree shall go beyond what was or may be concluded or prayed for in the Application under which it was or may be pronounced.

Applications or Petitions may, during Vacation, be presented to Lord Ordinary officiating on Bills, who may proceed as may be requisite, etc.

See 20 & 21 V., c. 56, § 4.

§ II. Every Application or Petition which under the said recited Act or under this Act may be presented to the Court of Session during the Sittings of the said Court, may, during any Vacation or Recess of the said Court, be presented to the Lord Ordinary officiating on the Bills; and it shall be competent for the Lord Ordinary officiating on the Bills in each Time of Vacation or Recess to appoint or grant Warrant for such Intimation, Service, and Advertisement with respect to such Application or Petition as may be requisite or may be deemed proper; and all such Procedure which shall take place under the Authority of such Lord Ordinary officiating on the Bills shall be equally valid and effectual to all Intents and Purposes as if the same had taken place under the Authority of the Court: Provided always, that every such Application or Petition shall be addressed to the Court, and shall, during the Sitting of the Court, be proceeded with in the same Manner as if any Procedure which may have taken place before the Lord Ordinary on the Bills in Time of Vacation or Recess under the Authority of this Act had taken place before the Court in Time of Session.

Applications, etc., may be amended where authorized by the Court.

§ III. Every Application or Petition under the said recited Act or under this Act may be amended, where such Amendment shall be authorized by the Court; and it shall not be necessary in respect of such Amendment to make any Intimation or Service or Advertisement,

except such Intimation or Service or Advertisement, if any, as the Court may in the Circumstances of the Case think fit to appoint.

§ IV. Instruments of Disentail may be executed, and the Sanction and Authority of the Court to record the same afterwards applied for.—V. Conveyances, Excambions, etc., may be made, and the Authority of the Court afterwards interposed.—VI. Competent to present continuing Petitions for Authority to grant Feus and long Leases.—VII. Bond and Disposition in Security for Provision to younger Child may be granted to any Party advancing the Amount thereof.—VIII. Money placed in Trust prior to 1st August 1848 to purchase Land to be entailed may be partly invested in Land and partly employed for the Benefit of such Land.—IX. Sales may be made to pay off Entailer's Debts.—X. Where, at passing of this Act, entailed Estates may be sold under judicial Authority, Parties entitled to sell may make Application to the Court, in Form prescribed by recited Act.—XI. In Contracts of Excambion, etc., the Destination, etc., may be omitted, provided such Destination, etc., be referred to as set forth in the original Tailzie.—XII. Where, in any Tailzie executed after 1st August 1848, the Maker of the Tailzie declares that 10 G. 3, c. 51, and 5 G. 4, c. 87, are applicable, they shall be deemed to be so.—XIII. Where Tailzie executed after 1st August 1848 does not expressly prohibit the granting of Feus, etc., Heir of Entail in Possession may execute Powers of granting Feus, etc.—XIV. Heirs of Entail in Possession entitled to sell Portion of Estates, etc., under 8 and 9 Vict., c. 19, may do so to any Company authorized to acquire the same in Consideration of annual Feu Duty, etc.—XV. Company not to pay, nor Heir of Entail to receive, any Grassum, etc., for any Rights conveyed but annual Feu Duties, etc.—XVI. All Feu Duties, etc., made payable by Company to be a first Charge on the Revenues of Company.

§ XVII. It shall be sufficient, in any Affidavit directed by the said recited Act to be made and produced in any Application thereby authorized, that such Affidavit bear that the Particulars required by the said recited Act to be specified therein are so specified to the best of the Knowledge and Belief of the Maker of such Affidavit; and where such Affidavit has not been or shall not be made and lodged at the Outset of the Proceedings under such Application, the Court shall direct such Omission to be supplied, and shall, on such Omission being supplied, proceed as if such Affidavit had been timeously given in.

§ XVIII. Every Consent which, on the Behalf of any Heir of Entail being under Age, or subject to any legal Incapacity, whose Consent has been or is or shall be required under the said recited Act, has been or shall be given by any Tutor or Curator or other legal Guardian duly authorized to consent in Terms of the said recited Act on the Belief of such Heir of Entail, shall be deemed and taken to be and shall be valid and sufficient, except in any Case of Application for disentailing, without the Concurrence of such Heir of Entail, and without any Consent to or Approval of the Actings of such Tutor or Curator or other legal Guardian, by such Heir of Entail; but the Consent of such Curator or other Guardian on behalf of such Heir of Entail, in Terms of the said recited Act, shall not in any future Application under the said recited Act or this Act, or in any Application under the said recited Act not yet finally disposed of (unless in any Case in the Circumstances of which the Court shall be of Opinion that the Consent of the Tutor, Curator, or other legal Guardian alone is sufficient), be received or acted on where such Heir of Entail, being of sound Mind, and above the Age of Fourteen Years, shall, in the course of the Application wherein such Consent may be tendered, enter Appearance and oppose the Reception of such Consent, which such Heir of Entail is hereby authorized to do.

*Procedures.*

10 G. 3, c. 51.  
5 G. 4, c. 87.

8 & 9 V., c. 19.

Affidavit sufficient  
if stated to be the  
best of Belief.

As to Affidavits not  
lodged in Time.

Provision as to  
Consents for  
Minors and inca-  
pacitated Persons.

See 12 & 18 V.,  
c. 51.

Entail. Verdicts.

§ XIX. Rights of Heir of Entail obtaining Consents and presenting Application not to be affected by Alteration of Circumstances afterwards occurring.—XX. Heirs of Entail not to give Consents where opposed by heritable Creditors.—XXI. Heir Apparent of Entail not to give Consent in opposition to such Creditors.—XXII. Propelling of Succession, under Reservation of Liferent, to have no effect upon Applications under this or the recited Act.—XXIII. Bonds and Dispositions in Security may contain Power of Sale.

Judgments and  
Decrees to be final.

§ XXIV. Every Judgment and Decree pronounced, and that shall be pronounced upon any Application under the said recited Act, or under this Act, where such Judgment or Decree has not been or shall not be brought under Review of the House of Lords by Appeal, or brought under Reduction upon any relevant Ground during the Period within which such Judgment or Decree might have been appealed from, shall, as regards Third Parties acting bona fide on the Faith thereof, be no longer reducible on any Ground of Irregularity or Noncompliance with the Provisions of the said recited Act or of this Act, but in respect of any such Ground of Challenge be final and conclusive; and the Period during which Challenge or Appeal is competent, under the said recited Act or under this Act, or of any such Judgment or Decree, or of any Instrument of Disentail, or other Deed executed in virtue of such Judgment or Decree, shall not be extended in respect of the Minority or Want of Capacity to act of any Person or Persons whatever.

*Exceptions of  
Minority and  
non valens agere  
inadmissible.*

§ XXV. Interpretation of Terms.

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16° & 17° VICTORIÆ REGINÆ.

CAP. CVII.

[See § 313, as to  
Notice and Limita-  
tion of Actions,  
etc., against  
Officers of Cus-  
toms.]

*An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom, and of the Isle of Man; and certain Laws relating to Trade and Navigation and the British Possessions.*—[20th August 1853.]

[This Act is printed in Book I., Court of Exchequer.]

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17° & 18° VICTORIÆ REGINÆ.

CAP. LIX.

[Verdicts, 1854.  
Am. by 22 & 23 V.,  
c. 7.]

*An Act to allow Verdicts on Trials by Jury in Civil Causes in Scotland to be returned although the Jury may not be unanimous.*—[31st July 1854.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the Authority of the same, as follows : From and after the passing of this Act, if upon the Trial by Jury of any Civil Cause in the Court of Session in Scotland the Jury are unable to agree upon a Verdict, and if, after having been kept in Deliberation for a Period of Six Hours, Nine of the said Jury shall agree, the Verdict agreed to by such Nine may be returned as the Verdict of the Jury, and shall be taken and shall have the same Force and Effect as if found unanimously by the whole of the said Jury, any Statute to the contrary notwithstanding, and during the said Period they may be furnished with necessary Refreshment by Leave of the Judge.

*Verdicts. Interest.*

If Jury unable to agree, and if after Six Hours Nine of the Jury agree, the Verdict of such Nine to be taken.

## 17° &amp; 18° VICTORIÆ REGINÆ.

## CAP. LXXX.

*An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland.*—[7th August 1854.]

[Registration of Decree affecting Status. Ext. by 18 & 19 V., c. 29, § 5.]

§ XXXV. Name of Father of illegitimate Child not to be entered, unless at Request of Father and Mother; but if Paternity or Legitimacy of Child fixed by Decree of Court, the Clerk to notify same to the Registrar.—XLVIII. Marriages of Persons fined for irregular Marriages, and Marriages established by Decree of Declarator, to be registered.—XLIX. Convictions in irregular Marriages and Decrees of Declarator of Marriages to be intimated to Registrar.

## 17° &amp; 18° VICTORIÆ REGINÆ.

## CAP. XC.

*An Act to repeal the Laws relating to Usury and to the Enrolment of Annuities.*—[10th August 1854.]

[Usury Repeal, 1854.]

§ III. Where Interest is now payable upon any Contract, express or implied, for Payment of the legal or current Rate of Interest, or where upon any Debt or Sum of Money Interest is now payable by any Rule of Law, the same Rate of Interest shall be recoverable as if this Act had not been passed.

Legal or current Rate of Interest to mean the same as if this Act had not passed.

See 48 G. 3, c. 151, § 19.

## 17° &amp; 18° VICT., CAP. CIV.

Evidence.  
Arrestment.

17° &amp; 18° VICTORIÆ REGINÆ.

CAP. CIV.

[“The Merchant  
Shipping Act,  
1854.”]*An Act to amend and consolidate the Acts relating to  
Merchant Shipping.*—[10th August 1854.]Copies of Registers  
and Declarations  
to be admissible in  
Evidence, and to  
be prima facie  
Proof of certain  
Things.

§ CVII. Every Register of or Declaration made in pursuance of the Second Part of this Act in respect of any *British Ship* may be proved in any Court of Justice, or before any Person having by Law or by Consent of Parties Authority to receive Evidence, either by the Production of the Original or by an examined Copy thereof, or by a Copy thereof purporting to be certified under the Hand of the Registrar or other Person having the Charge of the Original; which certified Copies he is hereby required to furnish to any Person applying at a reasonable Time for the same, upon Payment of One Shilling for each such certified Copy; and every such Register or Copy of a Register, and also every Certificate of Registry of any *British Ship*, purporting to be signed by the Registrar or other proper Officer, shall be received in Evidence in any Court of Justice or before any Person having by Law or by Consent of Parties Authority to receive Evidence as *prima facie* Proof of all the Matters contained or recited in such Register when the Register or such Copy is produced, and of all the Matters contained in or indorsed on such Certificate of Registry, and purporting to be authenticated by the Signature of a Registrar, when such Certificate is produced.

Service to be good  
if made personally,  
or on board Ship.

§ DXXII. Service of any Summons or other Matter in any legal Proceeding under this Act shall be good Service, if made personally on the Person to be served, or at his last Place of Abode, or if made by leaving such Summons for him on board any Ship to which he may belong with the Person being or appearing to be in Command or Charge of such Ship.

Document proved  
without calling  
attesting Witness.

§ DXXVI. Any Document required by this Act to be executed in the Presence of or to be attested by any Witness or Witnesses, may be proved by the Evidence of any Person who is able to bear Witness to the requisite Facts, without calling the attesting Witness or Witnesses or any of them.

Power of Judge of  
Court of Record or  
Admiralty to arrest  
Foreign Ship that  
has occasioned  
Damage.

§ DXXVII. Whenever any Injury has, in any Part of the World, been caused to any Property belonging to her Majesty or to any of her Majesty's Subjects by any Foreign Ship, if at any Time thereafter such Ship is found in any Port or River of the United Kingdom, or within Three Miles of the Coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in *Scotland* the Court of Session, or the Sheriff of the County within whose Jurisdiction such Ship may be, upon its being shown to him by any Person applying summarily that such Injury was probably caused by the Misconduct or Want of Skill of the Master or Mariners of such Ship, to issue an Order directed to any Officer of Customs or other Officer named by such Judge, requiring him to detain such Ship until such Time as the Owner, Master, or Consignee thereof has made Satisfaction in respect of such Injury, or has given Security, to be approved by the Judge, to abide the Event of any Action, Suit, or other legal Proceeding that may be instituted in respect of such Injury, and to pay all Costs and Damages that may be awarded thereon; and any Officer of Customs



or other Officer to whom such Order is directed shall detain such Ship accordingly.

*Arrestment, etc.*

§ DXXVIII. In any Case where it appears that before any Application can be made under the foregoing Section such Foreign Ship will have departed beyond the Limits therein mentioned, it shall be lawful for any commissioned Officer on full Pay in the Military or Naval Service of her Majesty, or any British Officer of Customs, or any British Consular Officer, to detain such Ship until such Time as will allow such Application to be made and the Result thereof to be communicated to him; and no such Officer shall be liable for any Losses or Damages in respect of such Detention unless the same is proved to have been made without reasonable Grounds.

Power in certain Cases to detain Ship before Application made to Judge.

§ DXXIX. In any Action, Suit, or other Proceeding in relation to such Injury, the Person so giving Security as aforesaid shall be made Defendant or Defender, and shall be stated to be the Owner of the Ship that has occasioned such Damage; and the Production of the Order of the Judge made in relation to such Security shall be conclusive Evidence of the Liability of such Defendant or Defender to such Action, Suit, or other Proceeding.

Who to be Defendant to Suit in such Cases.

## 18° & 19° VICTORIÆ REGINÆ.

### CAP. XXIX.

*An Act to make further Provision for the Registration of Births, Deaths, and Marriages in Scotland.*—[15th June 1855.]

[Registration Act, 1855. See 17 & 18 V., c. 80, § 35.]

§ V. In every Case in which the Status of any Person shall be altered by a Decree of any competent Court, the Clerk to the Process shall forthwith report such Decree to the Registrar-General; and it shall be lawful for the Registrar-General, and he is hereby required, to take all Measures necessary for having the Entries in the Duplicate Registers affected by such Decree rectified, by causing the Date of the Decree and the Import thereof to be noted upon the Margin of both Duplicates opposite to such Entries, as the Registrar-General shall think fit and direct.

Decrees of Court fixing Status of Parties to be noted in Register.

## 19° & 20° VICTORIÆ REGINÆ.

### CAP. XLVII.

*An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.*—[14th July 1856.]

[“The Joint Stock Companies Act, 1856.”]

Short Title of Act.

§ I. This Act may be cited for all Purposes as “The Joint Stock Companies Act, 1856.”

Act not to apply to Banking and Insurance Companies.

§ II. This Act shall not apply to Persons Associated together for the Purpose of Banking or Insurance.

Am. by 20 & 21 V., c. 49, § 3. See 20 & 21 V., c. 80.

*Registry.*

Company formed by Memorandum of Association and Registration.

Penalty on Partnerships exceeding a certain Number.

*Rep. by 20 & 21 V., c. 14, § 3.*

*As to Liability, see 20 & 21 V., c. 14, § 24.*

Effect of Registration.

*Am. by 20 & 21 V., c. 14, § 4.*

*Register of Shareholders.*

PART I.—CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.

§ III. Seven or more Persons, associated for any lawful Purpose, may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Registration, form themselves into an incorporated Company, with or without limited Liability.

§ IV. Not more than Twenty Persons shall, after the Third Day of November One thousand eight hundred and fifty-six, carry on in Partnership any Trade or Business having Gain for its Object, unless they are registered as a Company under this Act, or are authorized so to carry on Business by some private Act of Parliament or by Royal Charter or Letters Patent, or are engaged in working Mines within and subject to the Jurisdiction of the Stannaries; and if any Persons carry on Business in Partnership contrary to this Provision, every Person so acting shall be severally liable for the Payment of the whole Debts of the Partnership, and may be sued for the same without the Joinder in the Action or Suit of any other Members of the Partnership.

§ V. Matters required to be prescribed by Memorandum of Association.—VI. Prohibition against Identity of Names in registered Companies.—VII. Form of Memorandum of Association.—VIII. Shares to be taken by Subscribers of Memorandum of Association.—IX. Special Regulations may be prescribed by Articles of Association.—X. Form and Effect of Articles of Association.—XI. Stamp on Memorandum of Association and Articles of Association, and Use of printed Copies.—XII. Registration of Memorandum of Association and Articles of Association.

§ XIII. Upon any such Memorandum of Association, either with or without Articles of Association as aforesaid, being registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Shareholders in the Company, shall thereupon be a Body Corporate by the Name prescribed in the Memorandum of Association, having a perpetual Succession and a common Seal, with Power to hold Lands; but with such pecuniary Liability on the Part of the Shareholders as is hereinafter mentioned: The Certificate of Incorporation given by the Registrar shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with; and the Date of such Certificate shall be deemed to be the Date of the Incorporation of the Company.

§ XIV. Directors to be liable for Debts if Dividend be paid when the Company is known by them to be insolvent.—XV. Issue of Shares by Company.—XVI. Register of Shareholders.—XVII. Annual List of Shareholders on Register.—XVIII. Penalty on Company not keeping a proper Register.—XIX. Restrictive Definition of Shareholder.—XX. Transfer of Shares.—XXI. Certificate of Shares.—XXII. Calls a Debt to Company.—XXIII. Inspection of Register.—XXIV. Power to close Register.—XXV. Remedy for improper Entry or Omission of Entry in Register.—XXVI. Register to be Evidence.—XXVII. Copies of Memorandum and Articles of Association to be given to Shareholders.

PART II.—MANAGEMENT AND ADMINISTRATION OF COMPANIES.

*General.*

§ XXVIII. Registered Office of Company.—XXIX. Notice of

Situation of registered Office.—XXX. Publication of Name by a limited Company.—XXXI. Penalties on Nonpublication of Name.—XXXII. General Meeting of Company.—XXXIII. Power of Company to alter Regulations by special Resolution.—XXXIV. Definition of special Resolution.—XXXV. Registry of special Resolutions.—XXXVI. Copies of special Resolutions.—XXXVII. Notice to Registrar of Increase of Capital.—XXXVIII. Prohibition against holding Land.—XXXIX. Prohibition against carrying on Business with less than Seven Shareholders.—XL. Evidence of Proceedings at Meetings.—XLI. Contracts, how made.—XLII. Execution of Deeds abroad.—XLIII. Promissory Notes and Bills of Exchange.—XLIV. Mortgages according to *English Law*.—XLV. Bond and Disposition in Security according to *Scotch Law*.—XLVI. Conveyances according to *English Law*.—XLVII. Disposition in Security according to *Scotch Law*.—XLVIII. Examination of Affairs of Company by Inspectors appointed by the Board of Trade.—XLIX. Power of Inspectors.—L. Result of Examination, how dealt with.—LI. Power of Company to appoint Inspectors.—LII. Report of Inspectors to be Evidence.

§ LIII. Any Summons or Notice requiring to be served upon the Company may, except in Cases where a particular Mode of Service is directed, be served by leaving the same, or sending it through the Post addressed to the Company, at their registered Office, or by giving it to any Director, Secretary, or other principal Officer of the Company.

§ LIV. Notices by Letter shall be posted in such Time as to admit of the Letter being delivered in the due Course of Delivery within the Period (if any) prescribed for the giving of such Notice; and in proving such Service it shall be sufficient to prove that such Notice was properly directed, and that it was put into the Post Office at such Time as aforesaid.

§ LV. Any Summons, Notice, Writ, or Proceeding requiring Authentication by the Company may be signed by any Director, Secretary, or other authorized Officer of the Company, and need not be under the common Seal of the Company, and the same may be in Writing or in Print, or partly in Writing and partly in Print.

§ LVI. Recovery of Penalties.—LVII. Application of Penalties.—LVIII. Board of Trade may alter Forms in Schedule.

### PART III.—WINDING-UP.

§ LIX. The Provisions of this Act relating to the Winding-up of Companies shall apply to all Companies registered under this Act, and to all Companies registered under the Act passed in the Eighth Year of the Reign of her present Majesty, Chapter One hundred and ten, and intituled, *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*, from and after the Date at which they have obtained Registration under this Act in Manner hereinafter mentioned, but not any other Companies.

§ LX. Definition of "the Court," [in Scotland, means Court of Session in either Division thereof].—LXI. Liability of present Shareholders in respect of Debts.—LXII. Liability of former Shareholders in a Company other than a limited Company with respect to Debts, [Three Years after Transfer].—LXIII. Liability of former Shareholders in a limited Company with respect to Debts, [One Year after Transfer].—LXIV. Commencement of Winding-up of Company defined.—LXV. Definition of "Contributory," and legal Character of his Liability.

§ LXVI. For the purpose of ascertaining the Liability of existing and former Shareholders as between themselves, the following Rule shall be adopted; (that is to say,)

#### *Management and Administration.*

#### *Legal Instruments of Company. Deeds.*

#### *Examination of Affairs of Company.*

#### *Notices.*

Services of Notices on Company.  
*See* 8 V., c. 17, § 137.

Rule as to Notices by Letter.

Authentication of Notices of Company.

#### *Preliminary.*

Application of Part III. of Act.

Rights of Contributories between themselves.

Winding-up.

- (1.) In the Case of a Company other than a Limited Company every Transferee of Shares shall, in a Degree proportioned to the Shares transferred, indemnify the Transferor against all existing and future Debts of the Company :
- (2.) In the Case of a Limited Company every Transferee shall indemnify the Transferor against all Calls made or accrued due on the Shares transferred subsequently to the Transfer.

Winding-up by Court.

Circumstances under which Company may be wound-up by Court.

§ LXVII. A Company may be wound-up by the Court under the following Circumstances ; (that is to say,)

- (1.) Whenever the Company in General Meeting has passed a special Resolution requiring the Company to be wound-up by the Court :
- (2.) Whenever the Company does not commence its Business within a Year from its Incorporation, or suspends its Business for the Space of a whole Year :
- (3.) Whenever the Shareholders are reduced in Number to less than Seven :
- (4.) Whenever the Company is unable to pay its Debts :
- (5.) Whenever Three Fourths of the Capital of the Company have been lost or become unavailable.

Company when deemed unable to pay its Debts. . .

§ LXVIII. A Company shall be deemed to be unable to pay its Debts,

- (1.) Whenever a Creditor to whom the Company is indebted in a Sum exceeding Fifty Pounds then due has served on the Company, by leaving the same at their registered Office, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company have for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor :
- (2.) Whenever, in *England* and *Ireland*, Execution issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Suit or other legal Proceeding instituted by such Creditor against the Company is returned unsatisfied in whole or in part, by the Sheriff of the County in which the registered Office of the Company is situate :
- (3.) Whenever, in *Scotland*, the Inducias of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have expired without Payment being made.

Application for Winding-up to be by Petition.

§ LXIX. Any Application for the Winding-up of a Company shall be by Petition, and there shall be filed or lodged at the Time when such Petition is presented an Affidavit verifying the same : Such Petition may, in Cases where the Company is unable to pay its Debts, be presented either by a Creditor or a Contributory, but where any other Ground is alleged for winding-up the Company a Contributory alone is entitled to present the Petition.

Course to be pursued by Court on Petition of a Creditor.

§ LXX. Upon the Hearing of any Petition presented by a Creditor, the Court may dismiss such Petition, with or without Costs, to be paid by the Petitioner, or it may make an Order or pronounce an Interlocutor directing the Company, by a Day to be named in the Order or Interlocutor, to pay or secure Payment to the Creditor of all Monies that may be proved due to him, together with such Costs as the Court may direct ; or the Court may, if it so thinks fit, on the Hearing of such Petition, make an Order or Decree for winding-up the Company in the first Instance, or such Order as it deems just.

§ LXXI. If at the Expiration of the Time named in such Order or Interlocutor such Payment is not made, or Security given, the Court may thereupon make an Order or Decree for winding-up the Company.

§ LXXII. Upon the Hearing of a Petition presented by a Contributory, the Court may dismiss such Petition, with or without Costs, to be paid by the Petitioner, or it may make an Order or Decree directing the Company to be wound-up, or such other Order or Decree as it deems just.

§ LXXIII. After the Date of such Order or Decree for winding-up the Company, all Suits and Actions against the Company shall, if the Court so orders, be stayed: No Director or other Officer of the Company shall, without the Sanction of the Court, dispose of any of the Property, Effects, or Things in Action of the Company, and no Transfer of any Shares shall be valid without the Sanction of the Court: A Copy of such Order or Decree shall forthwith be reported by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

§ LXXIV. Power of Court of Chancery to remit Winding-up to Court of Bankruptcy.—LXXV. Collection and Application of Assets.

§ LXXVI. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act relating to Property, as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of any Creditor of such Trader, shall, if made or done by or against any Company registered under this Act, be deemed, in the event of an Order being made for winding-up such Company, to have been made or done by way of undue or fraudulent Preference of such Creditor of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding-up a Company shall be deemed to correspond with the filing of a Petition for Adjudication of Bankruptcy in the Case of an individual Trader; and any Conveyance or Assignment made by any Company registered under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

§ LXXVII. The Court may, after it has made an Order or Decree for winding-up the Company, summon before it any Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company; and the Court may require any such Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power which may appear to the Court requisite to the full Disclosure of any of the Matters which the Court thinks necessary to be inquired into for the Purpose of winding-up the Company; and if any Person so summoned refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may by Warrant authorize and direct the Persons therein named for that Purpose to apprehend such Person, and bring him before the Court for Examination.

§ LXXVIII. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in Manner aforesaid, concerning the Trade, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to sign and subscribe the same.

§ LXXIX. If any Director, Officer, or Contributory of any Com-

#### *Winding-up.*

Order for winding-up Company on Creditor's Petition.

Course to be pursued by Court on Petition of Contributory.

Effect of the Order for winding-up Company.

Fraudulent Preference.

Power of Court to summon Persons suspected of having Property of Company.

Examination of Parties by Court.

*Winding-up.*

Penalty on Falsification of Books.

Attachments, Sequestrations, and Executions within Three Months of Petition to be void.

Power of Court to grant Injunction or Interdict.

Power of Court to stay Proceedings.

*Official Liquidators.*

Appointment of Official Liquidators.

*Am. by.* 20 & 21 V., c. 14, § 14; 21 & 22 V., c. 60.

pany for the winding-up of which an Order or Decree has been made under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company, with Intent to defraud the Creditors or Contributories of such Company or any of them, every Person so offending shall be deemed to be guilty of a Misdemeanour, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without hard Labour.

§ LXXX. If any Attachment, Sequestration, or Execution is issued against any Company, by virtue whereof the Estate and Effects of the Company, or any of them, may be attached, sequestered, or taken in Execution, at any Time within Three Months next before the filing or Presentation of the Petition for winding-up the Company, such Attachment, Sequestration, or taking in Execution shall be void in favour of the Liquidators of the Company, as against the attaching, sequestering, or Execution Creditor, whether the same has been completely executed or not, except that such Creditor shall, if the Attachment, Sequestration, or Execution would have been valid but for this Provision, be entitled to retain out of any Money already realized, his Costs of Suit, and of the Attachment, Sequestration, or Execution, or to proceed with the Attachment, Sequestration, or Execution, for the Purpose of realizing such Costs; but on Satisfaction of such Costs, or on Tender of the Amount thereof by the Liquidators to the Creditor, it shall be lawful for the Liquidators to recover from such Creditor the Property so attached, sequestered, and taken in Execution, and the Proceeds of such Property, or the Residue thereof, as the Case may be.

§ LXXXI. Books of Company to be Evidence.—LXXXII. Power of Court to make Calls.—LXXXIII. Payment of Money into the Bank.

§ LXXXIV. The Court may, at any Time after the Presentation of a Petition for winding-up a Company, and either before or after making an Order for winding-up the same, upon the Application by Motion of any Creditor or Contributory of such Company, restrain further Proceedings in any Action or Suit against the Company, or appoint a Receiver of the Estate and Effects of the Company; it may also, by Notice of Advertisement, require all Creditors to present and prove their Claims within a certain Time, or be precluded from the Benefit of any Distribution which may be made before such Claim is proved.

§ LXXXV. The Court may, at any Time after an Order or Decree has been made for winding-up a Company, upon the Application by Motion of any Creditor or Contributory of the Company, and upon Proof to the Satisfaction of the Court that all Proceedings in relation to such Winding-up ought to be stayed, make an Order staying the same, either altogether or for a limited Time, on such Terms and subject to such Conditions as it deems fit.

§ LXXXVI. Power of Court to adjust Rights of Contributories.—LXXXVII. Power of Court to order Costs.

§ LXXXVIII. For the Purpose of conducting the Proceedings in winding-up a Company, and assisting the Court therein, there shall be appointed a Person or Persons to be called an Official Liquidator or Official Liquidators; and such Appointment shall be made as follows; that is to say,

In Cases within the Jurisdiction of the Court of Chancery in England or Ireland, or of the Court of Session in Scotland, or

of the Court of the Stannaries, the Court having Jurisdiction may, after requiring due Security, appoint such Persons or Person, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidators; it may from Time to Time remove any Person or Persons so appointed, and fill up any Vacancy occasioned by such Removal or by the Death or Resignation of any such Appointee or Appointees; if One Person only is appointed, he shall have all the Powers hereby given to several Liquidators; if more Persons than One are appointed, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidators may be done by all or any One or more of such Persons:

Official Liquidators.

In Cases within the Jurisdiction of any Court of Bankruptcy, the Official Assignee to be named by the Court shall be the Official Liquidator; but it shall be lawful, in Cases where the Winding-up takes place at the Suit of a Creditor, for the major Part in Value of the Creditors assembled at a Meeting to be held for the Purpose, and in Cases where the Winding-up takes place at the Suit of a Contributory, for the major Part in Value of the Contributories assembled at a Meeting to be held for the Purpose, to appoint an Official Liquidator to act concurrently with the Official Liquidator so named by the Court.

§ LXXXIX. The Official Liquidators or Liquidator shall be described by the Style of the Official Liquidators or Official Liquidator of the particular Company in respect of which they or he are or is appointed, and not by their or his individual Names or Name; they or he shall take into their or his Custody all the Property, Effects, and Things in Actions of the Company, and shall perform such Duties in reference to the Winding-up of the Company as may be imposed by the Court.

Style and Duties of  
Official Liquidators.

§ XC. The Official Liquidators shall have Power, with the Sanction of the Court, to do the following Things:—

Powers of Official  
Liquidators.

To bring or defend any Action, Suit, or Prosecution, or other legal Proceeding, Civil or Criminal, in the Name and on behalf of the Company:

To carry on the Business of the Company, so far as may be necessary for the beneficial Winding-up of the same:

To sell the real and personal and heritable and moveable Property, Effects, and Things in Action of the Company by public Auction or private Contract, with Power, if they think fit, to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents they may think necessary, and for that Purpose to use, when necessary, the Company's Seal:

To refer Disputes to Arbitration, and compromise any Debts or Claims:

To prove, claim, rank, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Exchange or

Official Liquidators.

Promissory Note, and also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sums or Sums of Money; and the drawing, accepting, making or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or endorsed by such Company in the course of carrying on the Business thereof:

To do and execute all such other Things as may be necessary for winding-up the Affairs of the Company and distributing its Assets.

§ XCI. Appointment of Solicitor to Official Liquidators.—XCII. Remuneration of Official Liquidators.—XCIII. Dissolution of Company.—XCIV. Registrar to make Minute of Dissolution of Company.—XCV. Power of Lord Chancellor of Great Britain to make Rules.—XCVI. Power of Lord Chancellor of Ireland to make Rules.—XCVII. Power of Court of Session in Scotland to make Rules.—XCVIII. Power of Vice-Warden of Stannaries to make Rules. Court of Stannaries. Service of Process. Appeal in Cases of Winding-up.—XCIX. Power of Commissioners of Bankruptcy to make Rules.—C. Rules with respect to Fees.—CI. Special Commissioners for receiving Evidence.

§ CII. A Company may be wound-up voluntarily,

Voluntary Winding-up of Company.

Circumstances under which Company may be wound-up voluntarily.

- (1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved:
- (2.) Whenever the Company in General Meeting has passed a special Resolution requiring the Company to be wound-up voluntarily.

Whenever a Company is wound-up voluntarily the Company shall from the Date of the Commencement of such Winding-up, cease to carry on its Business, except in so far as may be required for the beneficial Winding-up thereof, but its corporate State and all its corporate Powers shall, notwithstanding any Provision to the contrary in its Articles of Association, continue until the Affairs of the Company are wound-up.

§ CIII. Notice of Resolution to wind-up voluntarily.—CIV. Consequences of voluntary Winding-up.—CV. Saving of Rights of Creditors.

## PART IV.—REGISTRATION OFFICE.

§ CVI. Constitution of Registration Office.

## PART V.—REPEAL OF FORMER ACTS AND TEMPORARY PROVISIONS.

Repeal.

§ CVII. Repeal of 7 & 8 Vict., c. 110; 10 & 11 Vict., c. 78; and 18 & 19 Vict., c. 133.—CVIII. Provisions of 11 Vict., c. 45; 12 & 13 Vict., c. 108; 7 & 8 Vict., c. 111; and 8 & 9 Vict., c. 98. not to apply to Companies registered under this Act., etc.—CIX. Saving Clause as to Repeal.—CX. Registration of existing Companies.—CXI. Requisitions for Registration by existing Companies.—CXII. Authentication of Statements of existing Companies.—CXIII. Certificate of Registration of existing Companies.—CXIV.

Temporary Provisions.



Power of Company to change Name.—CXV. Certificate to be Evidence of Compliance with Act.—CXVI. Saving Rights of Creditors.

*Law of Sale.*

19° & 20° VICTORIÆ REGINÆ.

CAP. LX.

*An Act to amend the Laws of Scotland affecting Trade and Commerce.*—[21st July 1856.]

["The Mercantile Law Amendment (Scotland) Act, 1856."]

**W**HEREAS Inconvenience is felt by Persons engaged in Trade by reason of the Laws of *Scotland* being in some Particulars different from those of *England* and *Ireland* in Matters of common Occurrence in the course of such Trade, and with a view to remedy such Inconvenience it is expedient to amend the Law of *Scotland* as hereinafter is mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. From and after the passing of this Act, where Goods have been sold, but the same have not been delivered to the Purchaser, and have been allowed to remain in the Custody of the Seller, it shall not be competent for any Creditor of such Seller, after the Date of such Sale, to attach such Goods as belonging to the Seller by any Diligence or Process of Law, including Sequestration, to the effect of preventing the Purchaser or others in his Right from enforcing Delivery of the same; and the Right of the Purchaser to demand Delivery of such Goods shall from and after the Date of such Sale be attachable by or transferable to the Creditors of the Purchaser.

Goods sold, but not delivered, not to be attachable by Creditors of the Seller.

II. Where a Purchaser of Goods who has not obtained Delivery thereof shall after the passing of this Act sell the same, the Purchaser from him or any other subsequent Purchaser shall be entitled to demand that Delivery of the said Goods shall be made to him and not to the original Purchaser; and the Seller, on Intimation being made to him of such subsequent Sale, shall be bound to make such Delivery, on Payment of the Price of such Goods, or Performance of the Obligations or Conditions of the Contract of Sale, and shall not be entitled, in any Question with a subsequent Purchaser, or others in his Right, to retain the said Goods for any separate Debt or Obligation alleged to be due to such Seller by the original Purchaser: Provided

Seller not entitled to a Right of Retention generally against second Purchaser.

*Arrestment.  
Caution.*

always, that nothing in this Act contained shall prejudice or affect the Right of Retention of the Seller for Payment of the Purchase Price of the Goods sold, or such Portion thereof as may remain unpaid, or for Performance of the Obligations or Conditions of the Contract of Sale, or any Right of Retention competent to the Seller, except as between him and such subsequent Purchaser, or any such Right of Retention arising from express Contract with the original Purchaser.

*Arrestment and  
Poinding of Goods  
by Seller.*

*See 1 & 2 V., c.  
114; 19 & 20 V., c.  
91, § 1.*

III. Any Seller of Goods may attach the same while in his own Hands or Possession, by Arrestment or Poinding, at any Time prior to the Date when the Sale of such Goods to a subsequent Purchaser shall have been intimated to such Seller, and such Arrestment or Poinding shall have the same Operation and Effect in a Competition or otherwise as an Arrestment or Poinding by a Third Party.

*Rights of Land-  
lord not to be  
affected.*

IV. Nothing hereinbefore contained shall prejudice or affect the Landlord's Right of Hypothec and Sequestration for Rent.

*Seller not held to  
warrant Goods,  
except there be an  
express Warranty  
in Contract.*

V. Where Goods shall, after the passing of this Act, be sold, the Seller, if at the Time of the Sale he was without Knowledge that the same were defective or of bad Quality, shall not be held to have warranted their Quality or Sufficiency, but the Goods, with all Faults, shall be at the Risk of the Purchaser, unless the Seller shall have given an express Warranty of the Quality or Sufficiency of such Goods, or unless the Goods have been expressly sold for a specified and particular Purpose, in which Case the Seller shall be considered, without such Warranty, to warrant that the same are fit for such Purpose.

*Guarantees, etc., to  
be in Writing.*

VI. From and after the passing of this Act, all Guarantees, Securities, or cautionary Obligations made or granted by any Person for any other Person, and all Representations and Assurances as to the Character, Conduct, Credit, Ability, Trade, or Dealings of any Person, made or granted to the Effect or for the Purpose of enabling such Person to obtain Credit, Money, Goods, or Postponement of Payment of Debt, or of any other Obligation demandable from him, shall be in Writing, and shall be subscribed by the Person undertaking such Guarantee, Security, or cautionary Obligation, or making such Representations and Assurances, or by some Person duly authorized by him or them, otherwise the same shall have no Effect.

*Guarantees to or  
for a Firm not to  
be binding after  
any Change of the  
Firm, except in  
special Cases.*

VII. No Guarantee, Security, cautionary Obligation, Representation, or Assurance granted or made after the passing of this Act to or for a Company or Firm consisting of Two or more Persons, or to or for a single Person trading under the Name of a Firm, shall be binding on the Granter

or Maker of the same in respect of anything done or omitted to be done, after a Change shall have taken place in any One or more of the Partners of the Company or Firm to which the same has been granted or made, or of the Company or Firm for which the same has been granted or made : Unless the Intention of the Parties that such Guarantee, Security, cautionary Obligation, Representation, or Assurance, shall continue to be binding, notwithstanding such Change, shall appear either by express Stipulation, or by necessary Implication from the Nature of the Firm or otherwise.

VIII. Where any Person shall, after the passing of this Act, become bound as Cautioner for any principal Debtor, it shall not be necessary for the Creditor to whom such cautionary Obligation shall be granted, before calling on the Cautioner for Payment of the Debt to which such cautionary Obligation refers, to discuss or to do Diligence against the principal Debtor, as now required by Law ; but it shall be competent to such Creditor to proceed against the principal Debtor and the said Cautioner, or against either of them, and to use all Action or Diligence against both or either of them which is competent according to the Law of Scotland : Provided always, that nothing herein contained shall prevent any Cautioner from stipulating in the Instrument of Caution that the Creditor shall be bound before proceeding against him to discuss and do Diligence against the principal Debtor.

IX. From and after the passing of this Act, where Two or more Parties shall become bound as Cautioners for any Debtor, any Discharge granted by the Creditor in such Debt or Obligation to any One of such Cautioners without the Consent of the other Cautioners shall be deemed and taken to be a Discharge granted to all the Cautioners ; but nothing herein contained shall be deemed to extend to the Case of a Cautioner consenting to the Discharge of a Co-cautioner who may have become bankrupt.

X. From and after the passing of this Act, where any Bill of Exchange or Promissory Note shall be issued without Date, it shall be competent to prove by parole Evidence the true Date at which such Bill or Note was issued : Provided always, that summary Diligence shall not be competent on any Bill or Note issued without a Date.

XI. No Acceptance of any Bill of Exchange, whether Inland or Foreign, made after the Thirty-first Day of December One thousand eight hundred and fifty-six, shall be sufficient to bind or charge any Person unless the same be in Writing on such Bill, or if there be more than One Part

*Caution.  
Bill of Exchange.*

Cautioners not to be entitled to Benefit of Discussion.

*See 1695, c. 5. |*

Discharge of One Cautioner to operate as a Discharge to all.

Date of Bills or Notes may be proved by Parole.

Acceptance of Bill of Exchange must be in Writing.  
*See 1 & 2 G. 4, c. 78.  
Infra, § 18.*

*Bill of Exchange.*

All Bills drawn within the United Kingdom, etc., on any Party within the United Kingdom, etc., to be held Inland Bills.

Notarial Protest not to be necessary, except for the purpose of summary Diligence.

See 2 & 3 W. 4, c. 98; 6 & 7 W. 4, c. 58.

Notice of Dishonour in the Case of Inland Bills to be given as in the Case of Foreign Bills.

When Bill lost, stolen, or fraudulently obtained, Holder must prove Value given.

Holder of Bill or Note indorsed after Period of Payment to be subject to Objections, etc.

of such Bill, on One of the said Parts, and signed by the Acceptor or some Person duly authorized by him.

XII. Every Bill of Exchange drawn in any Part of the United Kingdom of *Great Britain and Ireland*, the Islands of *Man, Guernsey, Jersey, Alderney*, and *Sark*, and the Islands adjacent to any of them, being Part of the Dominions of her Majesty, and made payable in or drawn upon any Person resident in any Part of the said United Kingdom or Islands, shall be deemed to be an Inland Bill; but nothing herein contained shall alter or affect the Stamp Duty, if any, which but for this Enactment would be payable in respect of any such Bill.

XIII. From and after the passing of this Act, where any Inland Bill of Exchange shall be presented for Acceptance or Payment, and the same shall be dishonoured by not being accepted or paid, or where any Promissory Note shall be presented for Payment, and dishonoured by not being paid, it shall not be necessary that a notarial Protest shall be taken on such Bill of Exchange or Promissory Note in order to preserve Recourse against the Drawer or Indorser of such Bill or Promissory Note respectively; but it shall be sufficient to prove such Presentment and Dishonour, to the effect of preserving Recourse as aforesaid by other competent Evidence, either written or parole: Provided always, that nothing herein contained shall be taken to affect the Necessity for a notarial Protest in order to entitle the Holder of any Bill or Note to proceed with summary Diligence thereon.

XIV. Where any Inland Bill of Exchange shall be presented for Acceptance or Payment, and such Acceptance or Payment shall be refused, or where any Promissory Note shall be presented for Payment, and Payment shall be refused, Notice of the Dishonour of such Bill or Promissory Note by such Refusal to accept or pay shall, in order to entitle the Holder to have Recourse to any other Party, be given in the same Manner and within the same Time as is required in the Case of Foreign Bills by the Law of *Scotland*.

XV. Where any Bill or Note has been lost, stolen, or fraudulently obtained, the Holder of such Bill or Note suing or doing Diligence thereon shall be bound to prove that Value was given by him for the same; but such Proof may be made by parole Evidence.

XVI. When any Bill of Exchange or Promissory Note shall, after the passing of this Act, be indorsed after the Period when such Bill of Exchange or Promissory Note became payable, the Indorsee of such Bill or Note shall be deemed to have taken the same subject to all Objections or

Exceptions to which the said Bill or Note was subject in the Hands of the Indorser.

XVII. From and after the passing of this Act, all Carriers for Hire of Goods within *Scotland* shall be liable to make good to the Owner of such Goods all Losses arising from accidental Fire while such Goods were in the Custody or Possession of such Carriers.

XVIII. In relation to the Rights and Remedies of Persons having Claims for Repairs done to or Supplies furnished to or for Ships, every Port within the United Kingdom of *Great Britain* and *Ireland*, the Islands of *Man*, *Guernsey*, *Jersey*, *Alderney*, and *Sark*, and the Islands adjacent to any of them, being Part of the Dominions of her Majesty, shall be deemed a Home Port.

XIX. The Court of Session is hereby empowered from Time to Time, after the passing of this Act, to make such Regulations by Act or Acts of Sederunt as the said Court may deem meet for carrying into effect the Purposes of this Act: Provided always, that within Fourteen Days from the Commencement of any future Session of Parliament there shall be transmitted to both Houses of Parliament Copies of all Acts of Sederunt made and passed under the Powers hereby given.

XX. In citing this Act it shall be sufficient to use the Expression, "The Mercantile Law Amendment Act, *Scotland*, 1856."

XXI. Nothing in this Act contained shall apply to any Part of the United Kingdom except *Scotland*.

*Carriers, etc.*

Carriers to be liable for Losses by accidental Fires.

Every Port in United Kingdom, etc., to be deemed a Home Port.

Court of Session to make Regulations for carrying Act into effect.

Title of Act.

Act to apply to *Scotland* only.

## 19° & 20° VICTORIÆ REGINÆ.

### CAP. LXXIX.

*An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland.*—[29th July 1856.]

["Bankruptcy (*Scotland*) Act, 1856." Amended by 20 & 21 V., c. 19. See St. 1621, c. 18; 1690, c. 20; 1695, c. 6; 1696, c. 5; A. of S. 8 Jan. 1850.] A. of S. 26 May 1859.

§ I. Short Title, and Commencement of Act.—II. 54 G. 3, c. 137; 2 & 3 Vict., c. 41; and 16 & 17 Vict., c. 53, repealed.—III. Effect on existing Sequestrations.—IV. Construction and Meaning of certain Words.—V. Reckoning of Time.—VI. Dates of Deeds.

§ VII. Notour Bankruptcy shall be constituted by the following Circumstances:

1st. By Sequestration, or by the issuing of an Adjudication of Bankruptcy in *England* or *Ireland*; or

2d. By Insolvency, concurring either—

(A.) With a duly executed Charge for Payment, followed, where Imprisonment is competent, by Imprisonment or

*Constitution and Effects of Notour Bankruptcy.*

Notour Bankruptcy of Individuals.

See St. 1696, c. 5.

*Notour  
Bankruptcy.*

formal and regular Apprehension of the Debtor, or by his Flight or absconding from Diligence, or Retreat to the Sanctuary, or forcible defending of his Person against Diligence, or, where Imprisonment is incompetent or impossible, by Execution of Arrestment of any of the Debtor's Effects not loosed or discharged for Fifteen Days, or by Execution of Poinding of any of his Moveables, or by Decree of Adjudication of any Part of his heritable Estate for Payment or in Security; or

(B.) With Sale of any Effects belonging to the Debtor under a Poinding, or under a Sequestration for Rent, or with his retiring to the Sanctuary for Twenty-four Hours, or with his making Application for the Benefit of Cessio bonorum.

Of a Company.

§ VIII. Notour Bankruptcy of a Company shall be constituted either in any of the foregoing Ways or by any of the Partners being rendered Notour Bankrupt for a Company Debt.

Commencement of  
Notour Bank-  
ruptcy.

§ IX. Notour Bankruptcy shall be held to commence from the Time when its several Requisites concur, and when it has once been constituted shall continue, in case of a Sequestration, till the Debtor shall obtain his Discharge, and in other Cases until Insolvency cease, without Prejudice to Notour Bankruptcy being anew constituted within such Period.

Deeds made void  
by this Act, and  
Alienations of  
Property voidable,  
may be set aside by  
way of Action,  
etc.

§ X. Deeds made void by this Act, and all Alienations of Property by a Party insolvent or Notour Bankrupt, which are voidable by Statute or at Common Law, may be set aside either by way of Action or Exception, and a Decree setting aside the Deed by Exception shall have the like Effect, as to the Party objecting to the Deed, as if such Decree were given in an Action at his Instance.

May be by Trus-  
tee.

§ XI. The Trustee on a sequestrated Estate under this Act shall be entitled to set aside any such Deed or Alienation for behoof of the whole Body of Creditors, and in so doing shall be entitled to the Benefit of any Presumption which would have been competent to any Creditor.

*Pari passu Ranking  
of Diligence.*

Arrestments and  
Poindings.

§ XII. Arrestments and Poindings which shall have been used within Sixty Days prior to the Constitution of Notour Bankruptcy, or within Four Months thereafter, shall be ranked *pari passu* as if they had all been used of the same Date; provided, that if such Arrestments are used on the Dependence of an Action, or on an illiquid Debt, they be followed up without undue Delay; provided further, that any Creditor judicially producing in a Process relative to the Subject of such Arrestment or Poinding liquid Grounds of Debt or Decree of Payment within such Period shall be entitled to rank as if he had executed an Arrestment or a Poinding; and in case the first or any subsequent Arrester shall, in the meantime, obtain a Decree of Forthcoming and Preference, and thereupon shall recover Payment, or a poinding Creditor shall carry through a Sale, he shall be accountable for the Sum recovered to those who, by virtue of this Act, may be eventually found to have a Right to a Ranking *pari passu* thereon, and shall be liable to an Action at their Instance for Payment to them proportionally, after allowing out of the Fund the Expense of recovering the same; and if any Arrestments be used for attaching the same Effects after the Period of Four Months subsequent to the Bankruptcy, such Arrestments shall not compete with those used within the said Periods prior or subsequent thereto, but may rank with each other on any Reversion of the Fund attached, according to Law and Practice.

*Sequestration, when  
competent.*

§ XIII. Sequestration may be awarded of the Estate of any Person in the following Cases:

1st. In the Case of a living Debtor subject to the Jurisdiction of the Supreme Courts of *Scotland*:

A. On his own Petition, with the Concurrence of a Creditor or Creditors, qualified as hereinafter mentioned:

B. On the Petition of a Creditor or Creditors, qualified as hereinafter mentioned, provided the Debtor be Notour Bankrupt, and have within a Year before the Date of the Presentation of the Petition resided or had a Dwelling House or Place of Business in *Scotland*; or otherwise, in the Case of a Company being Notour Bankrupt, as hereinbefore provided, if it have within such Time carried on Business in *Scotland*, and any Partner have so resided or had a Dwelling House or if the Company have had a Place of Business in *Scotland*:

2d. In the Case of a deceased Debtor who at the Date of his Death was subject to the Jurisdiction of the Supreme Courts of *Scotland*:

A. On the Petition of a Mandatory to whom he had granted a Mandate to apply for Sequestration:

B. On the Petition of a Creditor or Creditors qualified as hereinafter mentioned.

*Award of Sequestration.*

Sequestration may be awarded in Cases herein enumerated.

Sequestration of deceased Debtor.

§ XIV. Petitions for Sequestration may be at the Instance or with the Concurrence of any One Creditor whose Debt amounts to not less than Fifty Pounds, or of any Two Creditors whose Debts together amount to not less than Seventy Pounds, or any Three or more Creditors whose Debts together amount to not less than One hundred Pounds, whether such Debts are liquid or illiquid, provided they are not contingent.

Qualification of Creditors, petitioning or concurring.

§ XV. Petitions for Sequestration, presented without the Concurrence of the Debtor, he being in Life, shall be competent only within Four Months of the Date of the Debtor's Notour Bankruptcy; and Petitions for Sequestration of the Estates of a deceased Debtor at the Instance of a Creditor may be presented at any Time after the Debtor's Death, but no Sequestration shall be awarded until the Expiration of Six Months from the Debtor's Death, unless he was at the Time of his Death Notour Bankrupt, or unless his Successors shall concur in the Petition or renounce the Succession, in which several Cases Sequestration shall forthwith be awarded; and in all other Cases falling under this Act a Petition for Sequestration shall be competent at any Time, and Sequestration may follow thereon in Manner hereinafter directed.

Within what Date Petitions may be presented.

§ XVI. It shall be competent for the Court to which a Petition for Sequestration is presented, whether Sequestration can forthwith be awarded or not, on special Application by a Creditor, either in such Petition or by a separate Petition, with or without Citation to other Parties interested, as the said Court may deem necessary, or without such special Application if the Court think proper, to take immediate Measures for the Preservation of the Estate, either by the Appointment of a Judicial Factor, who shall find such Caution as may be deemed necessary, with the Powers necessary for such Preservation, including the Power to recover Debts, or by such other Proceedings as may be requisite; and such interim Appointments or Proceedings shall be carried into immediate Effect; but if the same have been made or ordered by the Sheriff, they may be recalled by the Court of Session, on Appeal taken, in Manner hereinafter directed.

*Interim Preservation of Estate.*

Court may take Measures to preserve Estate before Sequestration.

§ XVII. The Sheriff shall have Power, upon Cause shown by any Creditor, or without any Application, if he shall think fit, at any Time after the Sequestration and before the Election of a Trustee, to cause

After Sequestration Bankrupt's Papers may be sealed up.

*Forum.*

Courts for award-  
ing Sequestration.

Later Sequestra-  
tions to be remitted  
to the first in Date.

[By § 4, "Lord  
Ordinary" is de-  
fined to mean the  
Lord Ordinary  
officiating on the  
Bills.]

No Proceeding  
under Order of  
Sheriff to be effec-  
tual after Appeal,  
except for Preser-  
vation of Estate.

*Form of Petition,  
and Productions  
therewith.*

Form of Petition.

Oath to be pro-  
duced.

Oath to be to  
Verity of Debt  
and Extent of Se-  
curities.

to be sealed up and put under safe Custody the Books and Papers of the Bankrupt, and to lock up his Shop, Warehouse, or other Repositories, and to keep the Keys thereof till a Trustee is elected and confirmed.

§ XVIII. Sequestration may be awarded either by the Court of Session or by the Sheriff of any County in which the Debtor, for the Year preceding the Date of the Petition, has resided or carried on Business; provided, that no Sequestration shall be awarded by any Court after Production of Evidence that a Sequestration has already been awarded in another Court, and is still undischarged.

§ XIX. When Sequestration has been awarded against a Debtor by the Sheriffs of Two or more Counties, the later Sequestration or Sequestrations shall, on Production of a Certificate by the Sheriff Clerk of the County in which the Sequestration first in Date was awarded, setting forth the Date of such Sequestration, be remitted to the Sheriff of such County; and where all the Sequestrations are of the same Date, any One may be brought by Appeal at any Time before either Division of the Court of Session or Lord Ordinary; and on such Appeal, or when a Sequestration has been awarded by the Court of Session alone, or by the Court of Session and also by One or more Sheriff Courts, the Court of Session or Lord Ordinary shall remit the Sequestration to such Sheriff Court as in the whole Circumstances they or he shall deem expedient; and a Notice of such Remit shall be inserted in the Gazette within Four Days after such Remit shall have been made: Provided always, that in any Case in which the Sheriff has refused to sequester, it shall be competent to present a Petition for Sequestration to the Court of Session notwithstanding such Judgment of Refusal.

§ XX. It shall be competent in such Case for each Sheriff awarding Sequestration to take such Measures in the meantime as may be necessary for preserving the Debtor's Estate and Effects within his Jurisdiction, under the Provisions of this Act; but no other Orders given by any Sheriff on or after awarding Sequestration, and no Proceedings of Creditors or others in pursuance thereof, excepting Orders given by the Sheriff before whom the Sequestration comes to depend, shall be of any Force or Effect from and after the Date of such Appeal, or of Sequestration by the Court of Session.

§ XXI. Petitions for Sequestration in the Court of Session shall be made to the Lord Ordinary, and be signed by the Petitioner or his Counsel or Agent, and the Division of the Court to which the Sequestration is appropriated shall be marked thereon, and in the Sheriff Court shall be signed by the Petitioner or his Agent, and in either Court, in Petitions at the Instance of the Debtor, but not signed by him, there shall be produced therewith a Mandate authorizing the same, signed by him, or in the case of a Company signed by a Party entitled to act for the Company; and in all Cases the petitioning or concurring Creditor shall produce with such Petition an Oath to the Effect hereinafter specified, and also the Account and Vouchers of the Debt as hereinafter provided; failing which Production the Petition shall be dismissed.

§ XXII. Such Oath, in the Case of a Creditor residing within the Kingdom of Great Britain and Ireland, shall be taken by him before a Judge Ordinary, Magistrate, or Justice of the Peace, to the Verity of the Debt claimed by him; and he shall in such Oath state what other Persons, if any, are, besides the Bankrupt, liable for the Debt or any Part thereof, and specify any Security which he holds over the Estate of the Bankrupt or of other Obligants, and deposes that he holds no other Obligants or Securities than those specified; and where he holds no other Person than the Bankrupt so bound, and no Security, he shall depose to that Effect.

§ XXIII. Such Oath, in the Case of a Creditor who is out of the



Kingdom of Great Britain and Ireland, shall be taken by him to the Verity of the Debt in the Manner above provided before a Magistrate or Justice of the Peace, or other Person qualified to administer Oaths in the Country where he resides (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul, or by a Notary Public), or his known Agent or Mandatory in Great Britain or Ireland shall make an Oath of Credulity in the Manner and to the Effect before provided.

§ XXIV. When a Petition is presented for Sequestration of the Estates of a deceased Debtor, the petitioning Creditor shall, in his Oath, or in a separate Oath, specify the Place where the Debtor resided or had a Dwelling House or carried on Business in Scotland at the Time of his Death, and whether he was then Owner of Estates in Scotland; and when the Petition is presented during the Life of the Debtor, without the Consent of the Debtor, the petitioning Creditor shall in such Oath, in the Event of the Debtor's Bankruptcy being founded on his retiring within the Sanctuary, swear that he believes the Debtor to have so retired, as hereinbefore set forth.

§ XXV. When the Creditor is a Corporation, an Oath of Verity made as aforesaid by the Secretary, Manager, Cashier, Clerk, or other principal Officer of such Corporation shall be sufficient, although the Person making the same be not a Member of such Corporation, or in case of other Companies an Oath by a Partner shall be sufficient; and where any Creditor shall be under Age or incapable to make Oath, an Oath of Credulity as aforesaid by his authorized Agent, Factor, Guardian, or Manager shall be sufficient.

§ XXVI. When a Petition for Sequestration is presented without the Consent of the Debtor, or for the Sequestration of the Estate of a Debtor who is dead, without the Consent of the Successor, the Lord Ordinary or Sheriff to whom it is presented shall grant Warrant to cite the Debtor, or, if dead, his Successor, to appear within a specified Period, if he be within Scotland, by delivering to him personally, or by leaving at his Dwelling House or Place of Business, or the Dwelling House or Place of Business last occupied by him, a Copy of the Petition and Warrant, and if the Debtor or his Successor be furth of Scotland, to cite him to appear within a specified Period by leaving such Copy at the Office of Edictal Citations, at the Dwelling House or Place of Business last occupied by him, and, if the Debtor be dead, also at the Dwelling House or Place of Business occupied by him at his Death, to show Cause why Sequestration should not be awarded; and the Lord Ordinary or the Sheriff shall, if desired, grant Diligence to recover Evidence of the Notour Bankruptcy or other Facts necessary to be established.

§ XXVII. When the Debtor is a Company it shall be a sufficient Citation that a Copy of the Petition and Warrant be left at the Place where the Business of the Company is or was last carried on, provided a Partner or a Clerk or a Servant of the Company be there, and failing thereof at the Dwelling House of any of the acting Partners, and if the House of such Partner cannot be found, by leaving a Copy at the Office of Edictal Citations; and Sequestration may be awarded either on the Application of the Company itself, or on the Application of a Creditor or Creditors to the Amount aforesaid, without the Consent of the Company, of the Estates of the Company and Partners jointly, or of their respective Estates separately.

§ XXVIII. The Inducias of Citation, when made personally or at a Dwelling House or Place of Business, shall be not less than Six nor more than Fourteen Days, and when made edictally shall be Twenty-one Days; and the Lord Ordinary or the Sheriff at the same Time shall direct Intimation of the Warrant, and of the Diet of Appearance on such Inducias, to be made in the Gazette.

#### *Form of Petition.*

How taken, when Creditor out of Great Britain or Ireland.

Oath to specify further Particulars in certain Cases.

Claims of Companies and Creditors who are Minors or incapable.

#### *Citation on Petition.*

When Citation of Parties necessary.

In Sequestration of a Company.

Inducias of Citation.

*Procedure on Petition.*

Sequestration to be forthwith awarded on Petition by Debtor.

Sequestration to be awarded after Citation and hearing Parties when Petition not by Debtor.

Recal of Sequestration within Forty Days.

*Am. by 28 & 24 V., c. 38, § 2.*

Recal of Sequestration at a future Time.

§ XXIX. When a Petition is presented in Manner aforesaid to the Lord Ordinary, or to the Sheriff, for Sequestration, the Lord Ordinary or the Sheriff shall forthwith, if the same is presented by or with the Concurrence of the Debtor, or, if dead, of his Successor, or if the Successor shall renounce the Succession, issue a Deliverance by which he shall award Sequestration of the Estates which then belong or shall thereafter belong to the Debtor before the Date of the Discharge, and declare the Estates to belong to the Creditors for the Purposes of this Act, and if the Debtor is dead shall ordain any Successor, who has made up a Title to or is in possession of any Part of his Property to convey the same to the Trustee to be appointed as hereinafter mentioned.

§ XXX. Where the Petition is not by or with the Concurrence of the Debtor, or, if dead, of his Successor, and if the Debtor, or, if dead, his Successor, do not appear at the Diet of Appearance, either in Person or by his Counsel or Agent, and show Cause why the Sequestration cannot be competently awarded, or if the Debtor so appearing do not instantly pay the Debt or Debts in respect of which he was made Bankrupt, or produce written Evidence of the same being paid or satisfied, and also pay or satisfy, or produce written Evidence of the Payment or Satisfaction of the Debt or Debts due to the Petitioner or to any other Creditor appearing and concurring in the Petition, the Lord Ordinary or Sheriff, on Production of Evidence of the Citation and of the foresaid Requisites for Sequestration, shall award Sequestration in Manner and to the Effect before mentioned; and it shall not be competent for any Creditor, after the Date of the first Deliverance on the Petition for Sequestration, to be confirmed Executor Creditor, or to raise or insist in any Adjudication against the Estate of the deceased Debtor.

§ XXXI. The Deliverance awarding Sequestration shall not be subject to Review; but any Debtor whose Estate has been sequestrated without his Consent, or the Successors of any deceased Debtor whose Estate has been sequestrated without their Consent, unless on the Application of a Mandatory authorized by the deceased Debtor, or any Creditor, whether the Sequestration has been awarded by the Lord Ordinary or by the Sheriff, may, within Forty Days after the Date of such Deliverance, present a Petition to the Lord Ordinary, setting forth the Grounds for Recal, and praying for Recal; and when Sequestration has been awarded of the Estate of a deceased Debtor, when his Successor was edictally cited, it shall be competent for his Successor, or any Person having Interest, to apply by Petition as aforesaid at any Time before the Publication of the Advertisement for Payment of the first Dividend hereinafter mentioned; and the Lord Ordinary shall, in these several Cases, order a Copy of the Petition for Recal and of his Deliverance to be served on the Parties who petitioned or concurred in the Petition for Sequestration, or on their respective known Agents, and on the Trustee, if appointed, and shall require them to answer within a specified short Time, and order a Notice of the Presentation of the Petition for Recal to be published in the Gazette, and on the Expiration of the Time so fixed he shall proceed to pronounce Judgment; and if he shall recal the Sequestration, the Recal shall be entered in the Register of Sequestrations, and on the Margin of the Register of Inhibitions.

§ XXXII. No Petition for Recal of the Sequestration, excepting as hereinafter provided, shall be competent after the Expiration of the said Forty Days, or after the Advertisement for Payment of the first Dividend; provided that Nine Tenths in Number and Value of the Creditors ranked on the Estate as herein directed may at any Time apply for Recal by Petition to the Lord Ordinary, who shall order Notice of his Deliverance to be published in the Gazette, requiring all

concerned to appear within Fourteen Days from the Date of Publication to show Cause why the Sequestration should not be recalled, and on Expiration of the said Time he shall proceed to pronounce Judgment.

§ XXXIII. Pending any Petition for Recal, and until the Sequestration be finally recalled, the Proceedings in the Sequestration shall go on as if no such Petition had been presented.

§ XXXIV. If a Creditor who has petitioned for Sequestration, or concurred in such Petition, or who has petitioned for Recal of a Sequestration, or appeared to oppose a Petition for Sequestration or Recal, or lodged an Objection, shall withdraw, or become Bankrupt, or die, any other Creditor may be sisted in his Place and follow out the Proceedings; and if the Debtor shall die after the Petition for Sequestration is presented, the Proceedings shall notwithstanding be followed out in Terms of this Act, so far as Circumstances will permit.

§ XXXV. At the Meeting for the Election of the Trustee, or at any subsequent Meeting to be called for the Purpose, a Majority in Number and Four Fifths in Value of the Creditors present or represented at such Meeting may resolve that the Estate ought to be wound up under a Deed of Arrangement, and that an Application should be presented to the Lord Ordinary or the Sheriff to sist Procedure in the Sequestration for a Period not exceeding Two Months, and on such Resolution being carried it shall not be necessary to elect a Trustee.

§ XXXVI. It shall be lawful for the Bankrupt, or any Person appointed by the Meeting, to report such Resolution to the Lord Ordinary or the Sheriff, within Four Days of the Date of such Resolution, and to apply for a Sist of the Sequestration in Terms thereof; and the Lord Ordinary or the Sheriff may hear any Party having Interest, and if he shall find that such Resolution was duly carried, and that the Application is reasonable, may grant the same.

§ XXXVII. In the event of such Application being granted, the Lord Ordinary or the Sheriff may, on the Application of any Creditor, make such Arrangement for the interim Management of the Estate as he shall think reasonable, if any shall appear to be necessary.

§ XXXVIII. If the Sequestration shall be sisted, the Creditors may, at any Time within the Period of such Sist, produce to the Lord Ordinary or the Sheriff a Deed of Arrangement, subscribed by or by Authority of Four Fifths in Number and Value of the Creditors of the Bankrupt; and the Lord Ordinary or the Sheriff may consider the same, and make such Intimation thereof as he may think proper, and hear Parties having Interest, and make any Inquiry he may think necessary; and if he shall be satisfied that such Deed of Arrangement has been duly entered into and executed and is reasonable, he shall approve thereof, and declare the Sequestration at an end; and such Deed shall thereafter be as binding on all the Creditors as if they had all acceded thereto: Provided always, that the Sequestration shall receive full Effect in so far as may be necessary for the Purpose of preventing, challenging, or setting aside Preferences over the Estate.

§ XXXIX. If such Resolution shall not be duly reported, or if a Sist be refused, or if such Deed of Arrangement shall not be duly produced, or if it shall not be approved of, the Sequestration shall proceed, and the Period of Time subsequent to such Resolution shall not be reckoned in calculating Periods of Time prescribed in this Act; and the Lord Ordinary or the Sheriff may make all necessary Orders, by appointing Meetings of Creditors and otherwise, for resuming the necessary Procedure in the Sequestration.

§ XL. If the Sequestration be declared at an end, the Judgment declaring the same shall be recorded in the same Manner as if the Sequestration had been recalled as hereinbefore provided.

*Procedure on Petition.*

Proceedings not to be stayed.

Sisting of one Party for another

Majority of Creditors may resolve that Estate be wound up.

Bankrupt to report Resolution to the Lord Ordinary.

Lord Ordinary to make Arrangement for interim Management of Estate.

If Sequestration be sisted, Creditors may produce to the Lord Ordinary a Deed of Arrangement.

If Resolution not reported, the Sequestration to proceed.

If Sequestration declared at an end, Judgment to be recorded.

*Procedure on Petition.*

Payment of Expenses of petitioning or concurring Creditor.

Commencement of Sequestration.

Clerks to Sequestration.

Sequestration not to fall asleep.

*Protection or Liberation of Debtor.*

Warrant of Protection may be granted to the Debtor.

Warrant to liberate the Debtor.

§ XLI. The petitioning or concurring Creditor shall be entitled to Payment by the Trustee, when he shall be appointed, out of the Funds of the Funds which shall come into his Hands, of the Expenses incurred by such Creditor in obtaining the Sequestration and doing the other Acts hereby required prior to the Election of the Trustee, and the same shall be taxed.

§ XLII. In all Questions under this Act or preceding Acts regarding Sequestration of the Estates of Debtors, the Sequestration shall be held to commence and take effect on and from the Date of the first Deliverance on any Petition for Sequestration, which shall be held to be the Date of the Sequestration, although the Sequestration be actually awarded until a later Date.

§ XLIII. In Sequestrations awarded in the Court of Session to be remitted to the Sheriff the Process of Sequestration shall be held to be in the Bill Chamber of the Court of Session, and the Clerks of the Bill Chamber shall be Clerks to such Sequestrations; and the Sheriff Clerk of any County shall be Clerk to the Sequestrations awarded by the Sheriff of that County; and no Process of Sequestration, either in the Court of Session or Sheriff Court, shall fall asleep, or shall be liable to be dismissed under the Fifteenth Section of the Act passed in the Sixteenth and Seventeenth Year of the Reign of her present Majesty Victoria Chapter Eighty; and on a Remit of a Sequestration awarded in the Court of Session being made to the Sheriff, a Copy of the Petition for Sequestration and of the First Deliverance, and also (where it is different) of the Deliverance awarding Sequestration, certified by One of the Clerks of the Bill Chamber or Sheriff Clerk, shall, with the Productions, be transmitted by the Petitioner to the Sheriff Clerk of the County to the Sheriff of which the Sequestration is remitted; and in all Sequestrations the Sheriff Clerk and Messengers at Arms and Officers of the Sheriff Court shall have Power to act in their respective Offices under this Act.

§ XLIV. The Lord Ordinary or Sheriff, when awarding Sequestration, may grant to the Debtor or Partners of the Company against whom or which it is awarded a Warrant of Protection against Arrest or Imprisonment for Civil Debt until the Meeting of the Creditors for the Election of Trustee, or he may refuse to grant such Warrant of Protection; and every such Warrant of Protection which shall not be advertised in the *London* and *Edinburgh Gazettes* within One Week after the Date of awarding such Sequestration, shall be ineffectual and incapable of being pleaded in bar of personal Diligence; but, notwithstanding that the Lord Ordinary or Sheriff may have refused to grant interim Warrant of Protection as aforesaid, it shall be competent to the Creditors on the Occasion of the Meeting to elect a Trustee, or at the Meeting after the Examination of the Bankrupt, or at any subsequent Meeting, to resolve that personal Protection ought to be granted to the Bankrupt for such Time as they may think fit, and the Trustee shall thereupon apply to the Sheriff, who shall grant the Protection.

§ XLV. The Lord Ordinary or the Sheriff by whom Sequestration was awarded may, on Application made either in the Petition for Sequestration or by a separate Petition by the Debtor, grant Warrant for liberating the Debtor, if in Prison, after such Intimation to the incarcerating Creditor or his known Agent as the Lord Ordinary or the Sheriff may deem just, and after hearing any Objection to the granting of such Warrant; and if the Application be refused it shall be competent for the Debtor to make a new Application for Liberation, with Consent of the Trustee and Commissioners, and, on Intimation and hearing Objections as aforesaid, the Lord Ordinary or the Sheriff may grant warrant to liberate; and in any Case the Lord Ordinary

or the Sheriff may annex such Conditions of Caution or otherwise to such Warrant as he may judge proper.

§ XLVI. The Judgment of the Sheriff granting or refusing Liberation shall be subject to Review by a Note of Appeal to either Division of the Court of Session, or, during Vacation, to the Lord Ordinary, which Appeal shall be heard summarily, and the Judgment pronounced thereon shall be final.

§ XLVII. The Warrant granting Protection or Liberation, or a Copy thereof, certified by One of the Bill Chamber Clerks if it is granted by the Lord Ordinary, or by the Sheriff Clerk if it is granted by the Sheriff, shall protect or liberate the Debtor from Arrest or Imprisonment in *Great Britain* and *Ireland* and her Majesty's other Dominions, for Civil Debt contracted previous to the Date of Sequestration, and all Courts of Justice and Judges and all Officers and Gaolers shall be bound to give effect to such Warrant; but such Warrant of Protection or Liberation shall not be of any Effect against the Execution of a Warrant of Apprehension or Imprisonment in meditations fugæ or ad factum præstandum, or for any criminal Act.

§ XLVIII. The Party applying for Sequestration shall present, before the Expiration of the Second lawful Day after the First Deliverance if given by the Lord Ordinary, or present or transmit by Post before the Expiration of the Second lawful Day after the said Deliverance if given by the Sheriff, an Abbreviate of the Petition and Deliverance, signed by him or his Agent, in the Form of Schedule (A. No. 1) hereunto annexed, to the Keeper of the Register of Inhibitions at *Edinburgh*, who shall forthwith record the said Abbreviate in the Register of Inhibitions, and write and subscribe a Certificate thereof on the said Abbreviate in the Form also specified in the said Schedule (A. No. 2), and shall, on the Request of the Party transmitting such Abbreviate, and on Payment by him of the Fees of such Registration, and of the Postage, retransmit the said Abbreviate by Post to the said Party; and the Abbreviate so recorded shall from the Date of the said Deliverance have the Effect of an Inhibition and of a Citation in an Adjudication of the Estate of the Debtor at the Instance of the Creditors afterwards ranked on the Estate; and it shall not be competent to stop such Effect, or the Effect of the Sequestration after it is awarded, by paying the Debt or Debts in respect of which it was applied for or awarded; and if the said Abbreviate be not so recorded it shall have no Effect as an Inhibition or Citation as aforesaid, and the Party applying for Sequestration shall, within Four Days from the Date of the Deliverance awarding the Sequestration (if awarded in the Court of Session), or, if it is awarded by the Sheriff, within Four Days after a Copy of the said Deliverance could be received in course of Post in *Edinburgh*, insert a Notice in the Form of Schedule (B.) hereunto annexed in the *Gazette*, and also One Notice in the same Terms within Six Days from the said Date in the *London Gazette*.

§ XLIX. Creditor claiming must produce Oath.—L. Oath in Cases where Accounts and Vouchers are not in Creditor's Possession.—LI. Provision for Correction of Oath.—LII. Creditors may vote and rank for Principal and Interest to Date of Sequestration only.—LIII. Valuation of Claim depending on a Contingency.—LIV. Valuation of Claim on Annuity.—LV. Creditor not to sue Cautioner after the Date of Sequestration.—LVI. Obligant not freed from Liability for Debt, in respect of any Vote given or Dividend drawn by the Creditor.—LVII. Liability of Creditors for Expenses.—LVIII. Oaths not to supersede other Evidence.—LIX. Valuation of Securities for voting.—LX. Valuation of Obligations of Co-obligants with Bankrupt.—LXI. Valuation of Claims against a Company and Partners.—LXII. Trustees may require a Conveyance of Security by Cre-

*Protection of Debtor.*

Sheriff's Judgment subject to Appeal.

Effect of Warrant of Protection or Liberation.

*Registration of Sequestrations.*

Recording Abbreviate of Sequestration.

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*Ranking of Claims.*

*Ranking.*

ditor on Twenty per Cent. Addition to his own Valuation. Creditors may correct Valuation by new Oath.—LXIII. Mandatories for Creditors may vote.—LXIV. Persons acquiring Debts after Sequestration not to vote.—LXV. Valuation of Securities with a view to a Dividend.—LXVI. Value of Claim against a Company to be deducted from Claim against Partners.

*Election and Removal or Resignation of Trustee.*

Appointment of Meeting to elect a Trustee.

§ LXVII. The Lord Ordinary or the Sheriff, by the Deliverance which awards the Sequestration, shall appoint a Meeting of the Creditors, to be held at a specified Hour, on a specified Day, being not earlier than Six nor later than Twelve Days from the Date of the Gazette Notice of Sequestration having been awarded, at a convenient Place within the County of the Sheriff awarding Sequestration, or to whom the Sequestration is remitted, to elect a Trustee or Trustees in Succession, and do the other Acts hereinafter provided.

§ LXVIII. Procedure at Meeting for Election of Trustee.—LXIX. Judgment of Sheriff as to Trustee.—LXX. When Sheriff not present.—LXXI. Judgment of Sheriff as to Trustee final.—LXXII. Caution to be found by Trustee.

Act and Warrant in favour of Trustee.

§ LXXIII. On the Decision of the Sheriff being given, declaring the Person elected Trustee, and on a Bond by the Trustee and his Cautioner being duly lodged as aforesaid, the Sheriff shall confirm his Election as Trustee, which Confirmation shall be final, and not subject to Review in any Court or in any Manner whatever; and the Sheriff Clerk shall issue an Act and Warrant in the Form of Schedule (D.) hereunto annexed to the Trustee, and the Trustee shall immediately transmit a Copy of such Act and Warrant to the Accountant, who shall make an Entry of the Name and Designation of the Trustee in the Register of Sequestrations, and such Act and Warrant shall be an effectual Title to the Trustee to perform the Duties hereby imposed on him, and shall be Evidence of his Right and Title to the sequestrated Estate, for the Purposes of this Act; and a Copy of such Act and Warrant in favour of the Trustee, purporting to be certified by the Sheriff Clerk, and to be authenticated by One of the Judges of the Court of Session, shall be received in all Courts and Places within *England, Ireland*, and her Majesty's other Dominions as *prima facie* Evidence of the Title of the Trustee, without Proof of the Authenticity of the Signatures or of the official Character of the Person signing, and shall entitle the Trustee to recover any Property belonging or Debt due to the Bankrupt, and to maintain Actions, in the same Way as the Bankrupt might have done if his Estate had not been sequestrated.

To be a complete Title to him.

Removal or Resignation of Trustee.

§ LXXIV. A Majority in Number and Value of the Creditors present at any Meeting duly called for the Purpose, may remove the Trustee, or accept of his Resignation; and One Fourth of the Creditors in Value may at any Time apply by Petition to the Lord Ordinary for Removal of the Trustee, and the Lord Ordinary shall order such Petition to be served on the Trustee, and intimated in the Gazette; and if the Lord Ordinary shall be satisfied that sufficient Reason has been shown, he shall remove the Trustee, and appoint a Meeting of the Creditors to be held for devolving the Estate on the Trustee next in succession, or electing a new Trustee; and if the Trustee shall die, resign, or be removed, or remain at any One Time for Three Months furth of *Scotland*, any Commissioner, or any Creditor ranked or claiming and entitled to be ranked on the Estate, may apply to the Sheriff for an Order to hold a Meeting for devolving the Estate on the Trustee next in Succession, or electing a new Trustee; and the Sheriff shall grant Warrant to hold such Meeting at a certain Time and Place, which shall be advertised in the Gazette by the Commissioner or Creditor so applying, and at the Time and Place so appointed the Credi-

Election of a new Trustee.

tors at such Meeting may devolve the Estate on the Trustee next in succession, or elect a new Trustee; and when the Estate is devolved on such Trustee the Creditors shall fix the Amount for which he shall find Security, and on a Bond being lodged the Sheriff shall confirm him, and an Act and Warrant shall be issued and recorded in the same Way and to the same Effect as in the first Election of a Trustee; and in all Cases of a new Election of a Trustee the Procedure shall take place in the like Manner as is hereinbefore provided in the Case of the first Election; and the succeeding or new Trustee shall be vested with the Powers and perform the Duties and be subject to the same Rules as are hereinbefore provided, and shall call to account the former Trustee, or his Heirs or Representatives.

§ LXXV. Election of Commissioners.—LXXVI. Removal of Commissioners.—LXXVII. Protection to Bankrupt.—LXXVIII. Allowance to Bankrupt.—LXXIX. Record of Abbreviate of his Confirmation.—LXXX. Trustee to take possession of Estate and Books, and make up Inventory.—LXXXI. Bankrupt to make up State of his Affairs; and to give Information and grant Deeds.—LXXXII. Trustee to recover Funds.—LXXXIII. Penalty on Trustee retaining Funds.—LXXXIV. Trustee to keep a Sederunt Book, and send Copy of Accounts to Accountant.—LXXXV. Duties of Commissioners.

§ LXXXVI. The Judicial Factor, the Trustee, and Commissioners shall be amenable to the Lord Ordinary and to the Sheriff, although resident beyond the Territory of the Sheriff, at the Instance of any Party interested, to account for their Intrusions and Management, by Petition served on them; and in case it shall appear that such Application ought not to have been made, the Party complained of shall be entitled to his full Expenses, to be either retained out of the Funds, or recovered from the Party complaining, as the Lord Ordinary or the Sheriff shall direct.

§ LXXXVII. Sheriff to name a Day for Bankrupt's Examination.—LXXXVIII. Sheriff may grant Warrant to bring Bankrupt for Examination.

§ LXXXIX. If the Bankrupt be in any Part of *Great Britain* and *Ireland* other than *Scotland*, the Lord Ordinary may, on Petition by the Trustee, grant Warrant to all Judges, Magistrates, Justices of the Peace, and Officers of the Law, to apprehend and transmit him to the Place of his Examination, and to enforce the same, which they are hereby required to do; and if the Bankrupt be in Prison or Custody, the Lord Ordinary may grant Warrant as aforesaid to Magistrates and Gaolers, upon receiving a Duplicate of such Warrant, and an Acknowledgment for the Person of the Bankrupt, to deliver him to the Messenger or Officer presenting such Warrant, which they shall do accordingly; and such Warrant shall be sufficient Authority for the Apprehension, Transmission, Detention, and Imprisonment of the Bankrupt (when necessary for his safe Custody), and for his Retransmission after Examination to and Re-imprisonment in the Prison or Custody from which he was delivered up.

§ XC. Examination of Bankrupt's Wife and others.—XCI. Bankrupt and others must answer lawful Questions, and produce Documents.—XCII. Mode of Examination.

§ XCIII. If the Bankrupt or any of such other Persons shall refuse to be sworn, or to answer, to the Satisfaction of the Sheriff, any lawful Question put to him by the Sheriff or Trustee, or by any Creditor with the Sanction of the Sheriff, or without lawful Cause shall refuse to sign his Examination, or to produce Books, Deeds, or other Documents in his Custody or Power relating to the Estate, the Sheriff may grant Warrant to commit him to Prison, there to remain until he comply with the Order, which Warrant shall specify the Question

*Ranking of Claims  
etc.*

*Election and Removal of Commissioners.*

*Protection and Allowance to Bankrupt.*

*Duties of Trustee and Commissioners.*

*Judicial Factor, Trustee, and Commissioners amenable to Lord Ordinary and Sheriff.*

*Examination of Bankrupt.*

*Apprehension and Transmission of the Bankrupt when out of Scotland.*

*Penalty on Refusal to answer, etc.*

*Ranking of Claims,  
etc.*

Penalty on latent  
Partner of Bank-  
rupt Company not  
coming forward.

*Powers of Second  
and subsequent  
Meetings of Cre-  
ditors.*

*Calling of and Pro-  
cedure at Meetings.  
Extent of Trustee's  
Right.*

Trustee may get  
Property trans-  
ferred to him,  
although the Heir  
of the Bankrupt  
has made up  
Titles.

Decree to be re-  
corded in the  
Register of Adju-  
dications.

*Effect of Sequestra-  
tion on Ranking of  
Creditors.*

*Realization of  
heritable Estate.*

and Answer, Book, Deed, Document, or the Refusal to swear or to sign the Examination; and such Warrant shall not be subject to the Review of the Court of Session, but the Bankrupt or Person imprisoned may apply by written Petition (without Argument) to the Lord Ordinary for a Recal of the Warrant, and the Lord Ordinary shall order the Petition to be served on the Trustee or the Creditor and shall thereafter hear Parties *viva voce*, and pronounce Judgment.

§ XCIV. If any latent Partner of a Company whose Estates have been sequestrated shall not, by Intimation to the Trustee, acknowledge that he is a Partner, on or before the Day appointed for the Examination of the known Partners, he shall not be entitled to the Benefits or Privileges of this Act, unless in an Application for the same he shall satisfy the Lord Ordinary or the Sheriff that the Omission proceeded from innocent Mistake, or Ignorance of the Proceedings, or reasonable Misconception as to his Liability as a Partner, and unless he shall then follow out all necessary Steps for remedying as far as possible the Loss and Inconvenience thence arising.

§ XCV. Bankrupt may correct his State, and then must take Oath inserted in this Act.—XCVI. Report by Trustee after Bankrupt's Examination. Powers of Creditors over Estate.—XCVII. Proceedings if Bankrupt do not make a fair Surrender.—XCVIII. When Meetings to be called.—XCIX. Notice of Meetings.—C. No Notice to be sent in certain Cases.—CI. Rules as to computing Majorities.—CII. Vesting of Estate in Trustee. Vesting of moveable Estate. Vesting of heritable Estate in Scotland. Vesting of real Estates in England, Ireland, and other British Dominions.—CIII. Acquisitions of Bankrupt after the Sequestration to belong to the Creditors.—CIV. Subjects improperly included in Sequestration may be struck out.—CV. Trustee may complete feudal Titles or grant such Rights as Bankrupt could do.

§ CVI. When Sequestration is awarded against the Estate of a Person after his Death, and his Successor has made up a Title to his heritable Estate, the Trustee may apply by Petition to the Lord Ordinary, praying that such Estate shall be transferred to and vested in him, and the Lord Ordinary shall order the Petition to be served upon such Successor, and require him to answer the same within Fourteen Days; and an Abbreviate of such Petition and Deliverance, in Terms of the Schedule (A. No. 3) hereunto annexed, being recorded in the Register of Inhibitions kept at *Edinburgh*, shall have the Effect of an Inhibition, and the Keeper of the Register shall write on the said Abbreviate a Certificate in Terms of the said Schedule (A. No. 2); and if on Expiration of that Period no Cause is shown to the contrary, the Lord Ordinary shall declare such Estate to be transferred to and vested in the Trustee, as at the Date of the Sequestration, to the same Effect as is hereinbefore provided in regard to the Act and Warrant of Confirmation; and the Trustee shall, within Eight Days thereafter, cause an Abbreviate of such Petition and Deliverance to be recorded in the Register of Abbreviates of Adjudications, in Terms of the Schedule (E. No. 3) hereunto annexed, and the Keeper of the said Register shall write on such Abbreviate a Certificate in Terms of the said Schedule (E. No. 2).

§ CVII. Sequestration equivalent to an Adjudication in Competition;—CVIII. And to Arrestment and Pounding. Diligence on or after Sixtieth Day before Sequestration, or after it, ineffectual. Expenses of Diligence.—CIX. Interruption of Prescription.—CX. Preferences in case of a deceased Debtor.—CXI. Acts and Payments by Bankrupt after Sequestration null, except in certain Cases.—CXII. Sale of heritable Estate by Creditor.—CXIII. Sale by Trustee with Concur-



rence of heritable Creditors. Discharge of Burdens on Sale.—CXIV. *Ranking of Claims, etc.*  
Sale by Trustee alone.

§ CXV. It shall be competent for the Trustee, with Concurrence of a Majority of the Creditors in Number and Value, and of the heritable Creditors, if any, and of the Accountant, to sell the heritable Estate by private Bargain, on such Terms and Conditions regarding Price and otherwise, as the Trustee, with Concurrence of those Parties, may fix.

Trustee may with Approval of Accountant sell by private Bargain.

§ CXVI. It shall be the Duty of the Trustee to make up a Scheme of Ranking and Division of the Claims of the heritable Creditors and other Creditors on the Price of the heritable Estate sold; and such Scheme of Ranking and Division shall be reported by him to the Lord Ordinary of either Division of the Court of Session; and the Judgment thereon shall be a Warrant for Payment out of the Price against the Purchaser of the heritable Estate.

Trustee to make up a Scheme of Ranking and Division of Price.

§ CXVII. It shall be competent for the Lord Ordinary or the Court, on Application by the Trustee or any Creditor interested, with a Report thereon by the Accountant in Bankruptcy, and on Cause shown, to grant an interim Warrant for Payment of preferable Claims out of the Price of the Estate, or to authorize an interim Scheme of Division out of the Price, which Scheme of Division shall be disposed of as the Scheme of Division already provided for.

Court may grant interim Warrant for Payment out of Price.

§ CXVIII. No Poining of the Ground which has not been carried into Execution by Sale of the Effects Sixty Days before the Date of the Sequestration, and no Decree of Mails and Duties on which a Charge has not been given Sixty Days before the said Date, shall (except to the Extent hereinafter provided) be available in any Question with the Trustee: Provided, that no Creditor who holds a Security over the heritable Estate preferable to the Right of the Trustee shall be prevented from executing a Poining of the Ground, or obtaining a Decree of Mails and Duties after the Sequestration, but such Poining or Decree shall, in Competition with the Trustee, be available only for the Interest on the Debt for the current half-yearly Term, and for the Arrears of Interest for One Year immediately before the Commencement of such Term.

Heritable Creditors Right to poid the Ground limited.

§ CXIX. Nothing in this Act contained shall affect the Landlord's Right of Hypothec.

Landlord's Hypothec saved.

§ CXX. When any Estate is sold publicly by virtue of this Act, it shall be lawful for any Creditor to purchase the same; but the Trustee or Commissioners, or Adjudger, selling as aforesaid, shall not be entitled to purchase.

Creditors may purchase.

§ CXXI. Realized Estate to be a Fund of Division.—CXXII. Workmen's Wages to be privileged.—CXXIII. Creditor to produce Oath, etc., Two Months before Payment of first Dividend, and One Month before subsequent Dividends.—CXXIV. Creditors resident abroad may lodge Oath at later Periods.—CXXV. Trustee to make up and exhibit to Commissioners State of Funds. Commissioners to resolve as to Payment of Dividend, etc.—CXXVI. Trustee to examine and reject or admit Claims, and make up List of Creditors entitled to Payment of Dividend.

Payment of Dividends.

§ CXXVII. The Trustee shall, within Eight Days after the Expiration of such Fourteen Days, give Notice in the Gazette published next after Expiration of such Fourteen Days of the Time and Place of the Payment of the Dividend, and also notify the same by Letters put into the Post Office on or before the first lawful Day after the said Fourteen Days, addressed to each Creditor, in which he shall specify the Amount of the Claim and proposed Dividend thereon, and when he has rejected any Claim he shall notify the same to the Claimant by Letter as aforesaid, which Letter shall also contain a Copy of his

And to publish and send Notices of Payment of Dividend.

*Payment of Dividends.*

Creditors may appeal within a limited Period.

Trustee to make up State, etc., and Commissioners to resolve as in case of first Dividend.

*Subsequent Dividends.**Discharge of Bankrupt on Composition.*

See 23 & 24 V., c. 38, § 85.

*Without Composition.**Preferences and Collusions for procuring Discharge to be void.**Trustee's Discharge.*

Deliverance, and specify the Amount of the Claim; and a Certificate by the Trustee or an Execution by a Messenger or Sheriff Officer that such Letters have been put into the Post Office shall be sufficient Evidence thereof; and if any Creditor be dissatisfied with the Decision of the Trustee, he may appeal by a short written Note to the Lord Ordinary or to the Sheriff; but if no such Note be lodged with and marked by the Bill Chamber or Sheriff Clerk (as the Case may be) before the Expiration of Fifteen Days from the Date of the Publication in the Gazette of the said Notice, the Decision of the Trustee shall be final and conclusive so far as regards that Dividend; and in case the Claim have been rejected, such Decision shall be without Prejudice to any new Claim being afterwards made in reference to future Dividends, but which new Claim shall not disturb prior Dividends.

§ CXXXVIII. Trustee to make up a Scheme of Division.—CXXXIX. Dividends to be paid, and those disputed or claimed by contingent Creditors to be lodged in Bank.

§ CXXX. On the Expiration of Eight Months from the Date of the Deliverance actually awarding Sequestration, the Trustee shall again make up a State as hereinbefore provided, which he shall within Fourteen Days after the Expiration of the said Eight Months exhibit to the Commissioners, who shall meet and examine and audit the same, and perform the other Acts and Duties incumbent on them, in Manner before specified, and direct a second Dividend to be paid, if there shall be Funds to pay the same; and if the Commissioners shall direct a Dividend to be paid, the Trustee shall also make up Lists of the Creditors who are entitled and who are not entitled to Payment of the Dividend, and frame a Scheme of Division, and notify in the Gazette and by Letters, and any Creditor may appeal, all as is hereinbefore provided with respect to the first Dividend; provided that no Appeal by a Creditor shall be competent unless the Note of Appeal be lodged within Fifteen Days of the Date of Notification in the Gazette.

§ CXXXI. Dividend to be paid.—CXXXII. Same Proceedings as in prior Dividends.—CXXXIII. Dividends may be accelerated in certain Cases.—CXXXIV. Proceedings when Commissioners postpone the Dividend.—CXXXV. Where Estate is chiefly Land Periods of Payment may be altered.—CXXXVI. Winding up of Estate.—CXXXVII. Offer of Composition may be made at the Meeting for Election of Trustee.—CXXXVIII. Offer, if entertained, to be disposed of at the Meeting after the Bankrupt's Examination. Lord Ordinary or Sheriff to approve.—CXXXIX. Offer of Composition may also be made at Meeting after Bankrupt's Examination.—CXL. Bankrupt on making Declaration or Oath to obtain his Discharge.—CXLI. Trustee's Accounts to be audited before the Composition be approved.—CXLII. Sequestration to go on, notwithstanding Offer of Composition.—CXLIII. Bankrupt and Cautioner not to be entitled to object to certain Debts.—CXLIV. Claims against Cautioner limited in certain Cases to Two Years.—CXLV. If Offer of Composition rejected, no other to be entertained unless Nine Tenths of Creditors ranked shall agree.—CXLVI. Proceedings for this Purpose. May be discharged with Consent of Creditors. After Two Years may be discharged without Consent.—CXLVII. Bankrupt to make a Declaration or Oath before obtaining Discharge.—CXLVIII. This Act not to extend to discharge Crown Debtors, etc., unless Treasury give Consent.—CXLIX. Pay, Half Pay, and Pensions of Bankrupts to be applicable for the Benefit of Creditors.—CL. Preferences, Payments and collusive Agreements for Discharge to be void.—CLI. Bankrupt to forfeit Privileges, if participant in giving such Preferences, etc.—CLII. Proceedings for this Purpose.—CLIII. Trustees to lodge and

claimed Dividends, etc., in Bank. Claimants showing Right to apply to Lord Ordinary for Authority to receive Dividends. Interest Account of unclaimed Dividends.—CLIV. Law Accounts to be taxed.—CLV. Surplus to be paid to Bankrupt.—CLVI. Appointment of Accountant in Bankruptcy.—CLVII. Accountant to keep Register of Sequestrations.—CLVIII. Trustee to make an annual Return to Sheriff Clerk, and the Sheriff Clerk to the Accountant.—CLIX. Accountant in Bankruptcy to take cognizance of the Conduct of Trustees and Commissioners;—CLX. To superintend annual Returns;—CLXI. To report Disobedience;—CLXII. To give Information to Lord Advocate.—CLXIII. In case of Illness, etc., of Accountant, Lord President to appoint a Deputy.

§ CLXIV. It shall be competent to One or more Creditors of Parties deceased to the Amount of One hundred Pounds, or to Persons having an Interest in the Succession of such Parties, in the event of the Deceased having left no Settlement appointing Trustees or other Parties having Power to manage his Estate or Part thereof, or in the event of such Parties not accepting or acting, to apply by summary Petition to either Division of the Court for the Appointment of a Judicial Factor, and, after such Intimation of the Petition to the Creditors of the Deceased, and other Persons interested, as may be considered necessary, and after hearing Parties, the Court may appoint such Factor, subject to such Conditions as to Caution, and such other Conditions as the Court may provide by Act of Sederunt; and such Factor shall manage the Estate, recover Debts due to it, realize the moveable Effects by public or private Sale, as may be most expedient, dispose of the heritable Estate by public Sale or private Bargain, according to such Directions as the Court, on Report of the Accountant, may give, and shall apply the free Proceeds, after defraying all Expenses in Payment of the Claims of Creditors according to their several Rights and Preferences, conformably to a State of Funds and Scheme of Division to be prepared by him, and considered and approved of by the Court, on a Report by the Accountant; and thereafter the Factor shall account for the Residue, if any, after Payment of Debts and Expenses, to the Parties having a Right to the Deceased's Succession: Provided that the Accountant shall annually examine and audit the Proceedings, Intromissions, and Accounts of such Factor, which shall be duly transmitted for that Purpose, and report to the Court thereon, from Time to Time, as he may deem expedient, and shall generally exercise the like Powers and discharge the same Duties with regard to him as he is empowered and required to exercise and discharge with regard to a Trustee under a Sequestration, but subject always to the Control of the Lord Ordinary or the Court.

§ CLXV. The Court shall have full Power to regulate by Act of Sederunt the Caution to be found by such Factor, the Mode in which he shall proceed in realizing and dividing the Funds, and otherwise in the Discharge of his Duties, and any other Matter which they may deem necessary.

§ CLXVI. If a Party deceased has left a Settlement, appointing Trustees or other Parties having Power to manage his Estate as aforesaid, it shall nevertheless be competent for the Trustees under the Settlement, with or without Concurrence of the Creditors of the Deceased and of the Persons interested in his Succession, to apply in like Manner to the Court, and obtain from them an Order on the Accountant to superintend the Administration of the Estate, in which Case he shall exercise the like Powers and discharge the like Duties, under the Control of the Lord Ordinary or the Court, which have been provided for in the preceding Sections.

§ CLXVII. Any Trustee or Trustees to whom the Pursuer of a

*Judicial Factor,  
etc.*

*Accountant in  
Bankruptcy.*

*Judicial Power for  
winding up the  
Estates of Parties  
deceased.*

*Application for  
Judicial Factor on  
Estates of Persons  
deceased.*

*A. of S. 25 Nov.  
1857, § 1-80:—§ 1,  
Form of Petition;  
§ 2-18, Procedure;  
§ 14, Special  
Powers; § 15-20,  
Division of Fund;  
§ 21-29, Duties of  
Factor and Ac-  
countant; § 80,  
Procedure under  
20 & 21 V., c. 56,  
§ 4.*

*Judicial Factor's  
Duties to be regu-  
lated by Act of  
Sederunt.*

*Application of  
Trustees on Estate  
of deceased Parties  
for Supervision  
of Accountant.*

*Process of Cessio Bonorum.*

Cessio Bonorum.  
6 & 7 W. 4, c. 56.

When Creditors  
may resolve that  
Bankrupt is only  
entitled to Decree  
of Cessio.

*Supra*, § 167.

*Judicial Proceedings.*

Appeals, etc.,  
against Resolutions  
of Creditors and  
Deliverances of  
Trustee to the  
Lord Ordinary  
or Sheriff.

See 23 & 24 V., c.  
33, § 4.

Cessio shall grant a Conveyance of his Estate and Effects for behoof of his Creditors shall act under the Supervision and Control of the Accountant in like Manner as the Trustee under a Sequestration, and the Accountant shall exercise the like Powers and perform the like Duties as in that Case, but always under the Directions of the Court for which Purpose it shall be the Duty of every such Trustee, or, failing him, of the Clerk to any such Process in the Court of Session, or of the Clerk of the Sheriff Court in which the Cessio has been granted, to transmit a Note of the same, and Residence of such Trustee, to the Accountant, and the Accountant shall prepare a List of such Processes, and shall require from such Trustees at the End of each Year Accounts of their Intromissions, and report on the same annually to either Division of the Court, and he shall also bring before the Court any Instance of Malversation or Irregularity in such Trustees, whereupon the Court shall be entitled to inflict on them such Censure or Punishment as it may deem just.

§ CLXVIII. It shall be competent for a Majority in Number and Value of the Creditors at any Meeting called for the Purpose after the Election of the Trustee, if it shall appear to them that the Estate is not likely to yield free Funds for Division among the ordinary Creditors, after Payment of preferable Debts and Expenses, beyond One hundred Pounds, to resolve that the Bankrupt shall only be entitled to apply for and obtain a Decree of Cessio, and shall have no Right to a Discharge in the Sequestration; and, on such Resolution being passed, it shall be the Duty of the Trustee, after giving Eight Days previous Notice to the Bankrupt, to report such Resolution to the Lord Ordinary or the Sheriff, who shall hear Parties, if required, and decide with reference to the whole Circumstances of the Case, with or without a Report from the Accountant, whether such Resolution shall be confirmed or recalled; and if such Resolution shall be confirmed, the Bankrupt shall have no Right to a Discharge in the Sequestration, but shall be entitled to apply for a Decree of Cessio, and the Court shall have Power to grant such Decree in the Sequestration, without requiring the Bankrupt to bring a separate Process, and in all other respects the Sequestration shall be proceeded with in common Form.

§ CLXIX. It shall be competent to appeal against the Resolutions of the Creditors at Meetings either to the Lord Ordinary or the Sheriff, provided a Note of Appeal shall be lodged with and marked by One of the Clerks of the Bill Chamber within Fourteen Days after the Date of the Meeting at which the Resolution objected to has been passed, or (as the Case may be) in the Hands of and marked by the Sheriff Clerk within the like Period; and it shall in like Manner be competent to appeal against any Deliverance of the Trustee or Commissioners to the Lord Ordinary or the Sheriff, provided the Note of Appeal shall be lodged and marked as aforesaid within Fourteen Days from the Date of the Deliverance; and where any such Appeal is made, or where any Petition or Complaint is presented against the Trustee or Commissioners, or against any of the Creditors, the Lord Ordinary or the Sheriff (as the Case may be) shall appoint a Copy thereof, and of his Deliverance thereon, to be served on the Respondent, or his Mandatory or known Agent, and appoint the Respondent to appear at a specified Diet within such Period as may be reasonable; and the Lord Ordinary or the Sheriff (as the Case may be) shall at such Diet hear Parties *vivâ voce*, and the Lord Ordinary shall proceed to dispose of the Case, with or without a Record, as he shall consider best; and the Sheriff, without a Record, may decide, provided he shall specify the Facts, and assign the Grounds of his Judgment; but if he shall see Cause he may order Minutes to be

lodged by the Parties, containing their Averments in Fact and Pleas in Law, without Argument, and may hold the same as a closed Record, and proceed in a summary Way, and in pronouncing his Judgment he shall assign his Reasons; and it shall be competent to the Lord Ordinary or the Sheriff, if they shall think fit, where any Resolution of a Meeting of the Creditors is appealed against, to order a new Meeting to be held, in order to reconsider the Resolution.

§ CLXXX. It shall be competent to bring under the Review of the Inner House of the Court of Session, or before the Lord Ordinary in Time of Vacation, any Deliverance of the Sheriff, after the Sequestration has been awarded (except where the same is declared not to be subject to Review), provided a Note of Appeal be lodged with and marked by the Sheriff Clerk, within Eight Days from the Date of such Deliverance, failing which the same shall be final; and such Note, together with the Process, shall forthwith be transmitted by the Sheriff Clerk to the Clerk of the Bill Chamber; and the Lord Ordinary's Decision shall, when not expressly made final by this Act, be subject to Review of the Inner House; and it shall be competent to the Inner House or the Lord Ordinary to remit to the Sheriff, with Instructions.

§ CLXXXI. Where any Judgment of the Lord Ordinary is to be brought under Review of the Inner House, the same shall be done by a Reclaiming Note in common Form presented within Fourteen Days from the Date of the Judgment; and such Reclaiming Note shall be disposed of by the Inner House as speedily as the Forms of Court will allow.

§ CLXXXII. During the Dependence of Appeals or Petitions and Complaints it shall be competent to the Sheriff to give such Orders as may be necessary to regulate the interim Possession and Administration of the Estate.

§ CLXXXIII. If any Appeal shall be made to the House of Lords, the Sequestration shall, in all respects not inconsistent with or injurious to the Interests which may be affected by the Appeal, proceed without Interruption, and the Lord Ordinary shall make such Orders as may be necessary to regulate the interim Possession and Management of the Estate, and which Orders shall not be subject to Appeal.

§ CLXXXIV. All Deliverances under this Act purporting to be signed by the Lord Ordinary or by any of the Judges of the Court of Session, or by the Sheriff, as well as all Extracts or Copies thereof or from the Books of the Court of Session or the Sheriff Court purporting to be signed or certified by any Clerk of Court, or Extracts from or Copies of Registers purporting to be made by the Keeper thereof, or Extractor, shall be judicially noticed by all Courts and Judges in England, Ireland, and her Majesty's other Dominions, and shall be received as *prima facie* Evidence, without the Necessity of proving their Authenticity or Correctness, or the Signatures appended, or the official Character of the Persons signing, and shall be sufficient Warrants for all Diligence and Execution by Law competent.

§ CLXXXV. All Deliverances, Bonds, Schedules, and Executions under this Act, may be either printed or in Writing, or partly both; and Service or Citation may be made by a competent Officer without Witnesses.

§ CLXXXVI. The Trustee may, with Consent of the Commissioners, compound and transact or refer to Arbitration any Questions which may arise in the course of the Sequestration regarding the Estate, or any Demand or Claim made thereon, and the Compromise, Transaction, or Decree Arbitral shall be binding on the Creditors and the Bankrupt.

§ CLXXXVII. It shall be lawful for all Agents duly qualified to

*Judicial  
Proceedings.*

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Review of Sheriff's  
Judgments.

Review of Lord  
Ordinary's Judgments.

Regulation by  
Sheriff of interim  
Possession.

Appeals to House  
of Lords.

Deliverances, Ex-  
tracts, and Copies  
shall form Evi-  
dence.

*Extracts regulated  
by A. of S. 10 Feb.  
1858, § 5.*

Deliverances, etc.,  
may be printed.  
Service of Cita-  
tions.

Trustee and Com-  
missioners may  
compound and  
transact.

*Miscellaneous Provisions.*

Agents in Court of Session may be Agents in Causes under this Act before Sheriff.

See *A. of S.* 11 July 1828, § 90.  
*A. of S.* 26 May 1859.

practise before the Court of Session to practise in all Sheriff Courts, in so far as relates to any of the Proceedings authorized by this Act to be carried on before the Sheriff; provided that they shall not be entitled to Payment of any higher Fees than those legally exigible in such Courts.

§ CLXXVIII. Punishment of wilful Falsehood.—CLXXIX. Trustees may be authorized to receive and open Post Letters.—CLXXX. Fees payable.—CLXXXI. Fees payable to the Bill Chamber Clerks.—CLXXXII. Gazette Keeper to furnish Copies of Gazette.—CLXXXIII. Charges on Advertisements under this Act.—CLXXXIV. Conveyances, Deeds, etc., relating to Estates of Bankrupts, not liable to Stamp or other Duties.—CLXXXV. Power to Court of Session, by Acts of Sederunt, to apportion Duties and regulate Procedure in relation to this Act.

## 19° &amp; 20° VICTORIÆ REGINÆ.

## CAP. XCI.

[Judicial Procedure, etc., Scotland, 1856.]

See *A. of S.* 81 March 1685; 28 Nov. 1711; 10 Aug. 1754; 17 Jan. 1756; 11 July 1794; and 24 Dec. 1838.

*An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third, relating to Judicial Procedure and Securities for Debts in Scotland.*—[29th July 1856.]

WHEREAS a Bill has been brought into Parliament, intituled, *A Bill to consolidate and amend the Laws of Scotland regarding Insolvency and Bankruptcy*, by which it is proposed to repeal the Act passed in the Fifty-fourth Year of the Reign of his Majesty King George the Third, Chapter One hundred and thirty-seven, and it is expedient that certain Provisions therein contained relating to judicial Procedure and Securities for Debts in Scotland should be amended and re-enacted: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Effect of Arrestments executed as in the Hands of Persons out of Scotland.

*Am.* 1 & 2 V., c. 114, § 18.

Court of Session may regulate judicial Sales of Estates.

*Infra*, § 4, 5.

I. An Arrestment executed to attach the Effects of a Debtor, as in the Hands of a Person out of Scotland, shall not be held to have interpellated such Person from paying to the original Creditor, unless Proof be made that he, or those having Authority to act for him, were previously in the Knowledge of such Arrestment having been so used.

II. The Court of Session shall have full Power to make Acts of Sederunt for abridging the Forms of Publication and Citation, and regulating the Proceedings in Processes of Sale, Ranking, and Division, whether at the Instance of Creditors or of apparent Heirs; and in every Case of a Sale under the Authority of the Court of Session it shall be

lawful for the Purchaser, at any Term of *Whitsunday* or *Martinmas* subsequent to the Term of Payment of the Price, to lodge the Price, with the Interest due upon it, in any Joint Stock Bank of Issue in *Scotland*, at such Interest as can be procured for it, by doing which, and by giving Notice thereof to the Agent who carried on the Sale, he shall be discharged of the said Price; and further, the Court of Session, upon the Application of any of the Creditors, shall be empowered to make an Order on the Purchaser to lodge the Price and Interest, at any of the said Terms subsequent to the Term of Payment, in One or other of the said Banks, sufficient Intimation being always previously given, both to the Purchaser and to the common Agent for the Creditors, that such Application is made, in order that all Parties may have an Opportunity to object; and in all Cases of judicial Sales the Lands or other heritable Property may be brought to actual Sale, so soon as the necessary previous Steps are taken, whether the Ranking be concluded or not, unless the Court, upon Application of any Party concerned, shall find sufficient Cause to delay the Sale.

*Ranking and Sale.*

Sales may precede Ranking.

III. And whereas Doubts have arisen upon the Construction of an Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and ninety, Chapter Twenty, intituled, *Act anent the Sale of Bankrupt's Lands*, in so far as it requires that the common Debtor be found bankrupt and utterly insolvent: Be it enacted, That a judicial Sale at the Instance of Creditors may in all Cases proceed where the Interest of the Debts and the other annual Burdens exceed the yearly Income of the Property under Sale, or where a Sequestration shall have taken Place, without other Proof of Bankruptcy or Insolvency.

What Proof of Insolvency necessary for Sales.

*St.* 1690, c. 20.  
*See* 1695, c. 6.

IV. When the Estate of a Debtor is brought into the Court of Session by Process of judicial Sale and Ranking, the Decree of Sale to be pronounced by the Court shall be held as a general Decree of Adjudication in favour of every Creditor who shall afterwards be included in the Decree of Division; and the Effect of such general Decree shall be the same in all Competitions, or Questions of Ranking and Preference, as if it had been pronounced and extracted of the Date of the first Calling of the Process of Sale before the Lord Ordinary in the Outer House, and no separate Adjudication shall be allowed to proceed during the Dependence of a judicial Sale, and the Court is hereby authorized to settle, by an Act or Acts of Sederunt, in what Manner and at what Period or Periods the principal Sums and by-gone Interests of the Debts shall be accumulated, so as to do equal Justice to all concerned: Provided that it shall be

Decree of Sale to be held as a general Decree of Adjudication.

*Infra*, § 5, 6.  
*See St.* 1621, c. 6,  
7; 1681, c. 17.

*Adjudication.*

Different Creditors  
may be joined in  
One Adjudication.  
*Infra*, § 6.

competent to any Creditor who is in a Situation to adjudge to carry on the Action of Sale to its Conclusion, although deserted or abandoned by the original Pursuer.

V. And in order to lessen the Number of Adjudications for Debt, and the Expense to all Parties, and to facilitate the *pari passu* Preference of Creditors in similar Circumstances, be it enacted, That the Lord Ordinary officiating in the Court of Session before whom the first Process of Adjudication against any Estate for Payment or Security of Debt is called shall ordain Intimation thereof to be made in the Minute Book and on the Wall, in order that any other Creditors of the common Debtor who at the next Calling of the Cause can show that, although they have not executed their Summonses of Adjudication, they are in other respects, by the Nature of the Grounds of Debt and Steps taken by them, in Condition to proceed in adjudging the common Debtor's Estate, may produce the Instructions of their Debts, with Summonses of Adjudication, libelled and signetted, for the Purpose of their being conjoined in the Decree of Adjudication, Twenty Sederunt Days being allowed for such Intimation before the Cause can be called a second Time; and if any of those Forms shall happen to be omitted, such Adjudication shall be null and void, without Prejudice to its being brought forward again in more due Form, or still conjoined with any after Adjudication; and without Prejudice to the Validity and Order of Ranking of posterior Adjudications according to the Rules of Law, when any after Process or Processes of Adjudication are brought into Court, the same shall be regulated, as to the Time and Manner of proceeding in them, by an Act or Acts of Sederunt of the Court of Session, so as to provide, as far as Circumstances will admit, for the *pari passu* Preference of such posterior Adjudications with one another, and to abridge the Number and Expense of such Proceedings; and in all Cases where Penalties for Nonpayment, over and above Performance, are contained in Bonds or other Obligations for Sums of Money, and are made the Subject of Adjudication, or of Demand in any other Shape, it shall be in the Power of the Court to modify and restrict such Penalties, so as not to exceed the real and necessary Expenses incurred in making the Debt effectual.

Mode of rendering  
an Adjudication  
effectual.

VI. And in order to fix more clearly in Time coming what Diligence is necessary to make an Adjudication effectual, be it enacted, That the lodging of a Draft Charter and Note in the Office of the Presenter of Signatures, in Terms of the Act passed in the Tenth and Eleventh Years of the Reign of her present Majesty, Chapter Fifty-one, when the Holding is of the Crown, or the executing a Charge of



Horning against Superiors, when the Holding is of a Subject, and recording a Copy of such Note and an Abstract of such Draft Charter, or such Charge, in the Register of Abbreviates of Adjudications, shall be held in all Time coming as the proper Diligence for the Purpose aforesaid.

VII. It shall be lawful for any Person possessed of Lands or other heritable Property, and desiring to pledge the same in Security of any Sums paid or Balances arising or which may arise upon Cash Accounts or Credits, or by way of Relief to any Persons who may become bound with him for the Payment of such Sums or Balances, although paid or arising posterior to the Date of the Infestment, to grant heritable Securities accordingly upon his Lands or other heritable Property, containing Procuratory of Resignation and Precept of Sasine, for infesting any Bank or Bankers or other Persons who shall agree to give such Cash Accounts or Credits, or for infesting such Persons as shall become Cautioners for him, or jointly bound with him in such Cash Accounts or Credits: Provided always, that the Principal and Interest which may become due upon such Cash Accounts or Credits shall be limited to a certain definite Sum, to be specified in the Security, such definite Sum not exceeding the Amount of the principal Sum, and Three Years Interest thereon at the Rate of Five Pounds per centum: Provided also, that it shall be lawful for the Person to whom any such Cash Account or Credit is granted to operate upon the same by drawing out and paying in such Sums from Time to Time as the Parties shall settle between themselves, and that the Sasines or Infestments taken upon such heritable Securities shall be equally valid and effectual as if the whole Sums advanced upon such Cash Account or Credit had been paid prior to the Date of the Sasine or Infestment taken thereon, and that any such heritable Security shall remain and subsist to the Extent of the Sum limited, or any lesser Sum, until the Cash Account or Credit is finally closed, and the Balance paid up and discharged, and the Sasine or Infestment renounced.

*Cash Credit  
Securities.*

*See St. 1661, c. 81;  
A. of S. 10 July  
1811, No. 1V.*

*Securities for  
Cash Accounts or  
Credits.*

## 20° & 21° VICTORIÆ REGINÆ.

### CAP. XIV.

*An Act to amend the Joint Stock Companies Act, 1856.—*  
[13th July 1857.]

[“The Joint  
Stock Companies  
Act, 1857.”]

§ I. Short Title of Act.—II. Definition of Principal Act and Joint Stock Companies Acts.

*Registry. Official Liquidators.*

Penalty on Partnerships exceeding a certain Number.

Rep. 19 & 20 V., c. 47, § 4.

The Registrar to give Certificate of Incorporation.

Am. 19 & 20 V., c. 47, § 13.

Proviso as to Appointment of Liquidators by Courts other than Court of Bankruptcy.

Am. 19 & 20 V., c. 47, § 88.

Provisions as to Costs in Actions brought by certain limited Companies.

§ III. The Fourth Section of the principal Act shall be repealed, and in lieu thereof be it enacted as follows :

If after the passing of this Act more than Twenty Persons carry on, in Partnership, any Trade or Business having for its Object the Procurement of Gain to the Partnership, then, unless such Persons are included within One or more of the Classes following (that is to say).

1. Are registered as a Company under the principal Act ;
2. Are a Company incorporated or otherwise legally constituted by or in pursuance of some Act of Parliament, Royal Charter, or Letters Patent ; or
3. Are engaged in working Mines within and subject to the Jurisdiction of the Stannaries ;

Each One of the Persons so carrying on Business in Partnership together contrary to this Provision, shall be severally liable for the Payment of the whole Debts of the Partnership, and may be sued for the same without the Joinder in the Action or Suit of any other Member of the Partnership.

§ IV. The Registrar shall, on Payment of Five Shillings, issue a Certificate of Incorporation of any Company to any Person applying for the same, and such Certificate shall be admissible in Evidence in like Manner as the Certificate of Incorporation directed to be given by the principal Act.

[§ V.—X. Register of Shareholders.]

§ XI. Power to arrest Shareholder about to abscond, or to remove or conceal any of his Property.—XII. Arrested Shareholder may apply to Court for his Discharge.—XIII. Calls under Third Part of Principal Act to be Specialty Debt.

§ XIV. In Cases within the Jurisdiction of the Court of Chancery in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Stannaries, the Court having Jurisdiction shall, in the Appointment of an Official Liquidator or Official Liquidators, consult the Interests of both the Creditors and Contributories, and hear such Creditors or Contributories as it thinks fit to hear with respect to such Appointment. It may, unless both the Creditors and Contributories concur in the Appointment of a single Liquidator, appoint One or more Liquidator or Liquidators to act on behalf of each of such Parties. It may declare that in case of Difference, any Act may be done by a Majority of Liquidators ; or it may require the Liquidators in all cases of Difference to apply to the Court. It may do anything hereby authorized to be done, either upon the first Appointment of a Liquidator or at any subsequent stage of the winding up ; but, notwithstanding anything herein contained, it shall not be obligatory on the Court to appoint more than One Liquidator, if in its Discretion it thinks that such Appointment will be most conducive to Justice.

XV.—XXIII. [Official Liquidators. Relates to English Procedure.]

§ XXIV. Where a limited Company is Plaintiff or Pursuer in any Action, Suit, or other legal Proceeding, any Judge having Jurisdiction in the Matter may, if it be proved to his Satisfaction that there is reason to believe that if the Defendant be successful in his Defence the Assets of the Company will be insufficient to pay his Costs, require sufficient Security to be given for such Costs, and may stay all Proceedings until such Security be given.

XXV.—XXXIII. Temporary Provisions.

## 20° &amp; 21° VICTORIÆ REGINÆ.

## CAP. XVIII.

In Act to regulate Procedure in the Bill Chamber in Scotland.—[10th August 1857.]

[Bill Chamber Procedure, 1857. See A. of S. 15 July 1842; 10 Feb. 1858.]

1 & 2 V., c. 118.

WHEREAS under an Act of the First and Second Years of the Reign of her Majesty, intituled, *An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in Scotland, and to reduce the Fees payable in those Courts*, Two Clerks of the Bills were appointed, who have had the Charge of the Bill Chamber Department, and the Office of One of the said Clerks has since become vacant by Death: And whereas it has been found in Practice that the Business of the Bill Chamber cannot be conveniently conducted in Two Departments under Two separate Clerks, and it is expedient that in future the Duties of the Office should be executed by One Clerk: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

*As to Bankruptcy, see A. of S. 26 May 1859; and 10 Feb. 1858.*

I. The Office of One of the Clerks of the Bills in the Bill Chamber of the Court of Session in Scotland, now vacant, shall be abolished; and there shall in future be only One Clerk of the Bills, who shall be responsible for the reputed Solvency of Cautioners, and for consigned Money, and shall discharge in Person all the Duties attached to the Office, and the remaining Clerk of the Bills shall be the Clerk of the Bills under this Act.

Office of One of the Two Clerks of the Bills abolished, and Duties in future to be performed by One Clerk.

II. It shall be lawful for her Majesty, her Heirs and Successors, to appoint an Assistant Clerk of the Bills, and Two ordinary Clerks, to aid in the Performance of the Duties of the Office; and such Assistant Clerk shall act under the Orders of the Clerk of the Bills in the Performance of the Duties of the Office, and shall in the necessary Absence of the Clerk of the Bills subscribe and authenticate all such Writs and Documents as the Clerk of the Bills may, by any Law or Practice, subscribe or authenticate.

Assistant Clerk and ordinary Clerks to be appointed.

III. The Clerk of the Bills, and the Assistant and ordinary Clerks, shall be paid wholly by Salary; and the Salary of the Clerk of the Bills shall be Five hundred Pounds per annum, which shall include his Remuneration for the Discharge of the Duties imposed on him under the

Clerks to be paid wholly by Salaries.

*Fees and Consigned  
Monies.*

Bankrupt Acts, and also all Fees of Extracts and Bonds of Caution required by the Bill Chamber Procedure, or under such Acts, and shall be in lieu of all existing Salary, Allowances, Fees, and Emoluments whatsoever; and the Salary of the Assistant Clerk shall be Two hundred Pounds per annum; and the Salaries of the ordinary Clerks shall not exceed in all Two hundred Pounds per annum, divisible in such Proportions as may be deemed proper by the Commissioners of her Majesty's Treasury.

Salaries, etc., to be  
voted by Parlia-  
ment.

IV. The Salaries paid to the Clerk of the Bills, and the Assistant Clerk and ordinary Clerks in the Bill Chamber, and also the Expense of a suitable Office for conducting the Business of the Bill Chamber, and the necessary Expense of Printing and Stationery, and other Expenses of the Office, shall be defrayed out of the Monies to be voted by Parliament for that Purpose; and all Fees of every Description heretofore in use to be charged or collected in the Office of the Bill Chamber shall continue to be so charged and collected after this Act shall come into Operation, by the Clerk of the Bills, and be by him duly accounted for and paid over to the Commissioners of her Majesty's Treasury, or to such Person or Persons as they shall appoint.

Fees to be ac-  
counted for and  
paid over to the  
Treasury.

V. All Monies which shall in future be deposited or consigned in the Bill Chamber shall be forthwith deposited by the Clerk of the Bills in One of the Banks in *Edinburgh* established or incorporated by Act of Parliament or Royal Charter, in an Account to be kept by him in his official Capacity; and a proper written Receipt or Acknowledgment shall always be granted by the said Clerk to any Party depositing or consigning any Money in his Hands, at the Time of such Deposit or Consignation; and a full and particular State and Account shall be kept in the Office of the Bill Chamber of all such Deposits and Consignations; and the Clerk of the Bills shall cause the Monies in such Bank Account to be annually accumulated by adding the accruing Interest to the principal Sums.

Clerk of the Bills  
to keep separate  
Accounts of con-  
signed Monies.

Monies consigned  
with former Clerks  
of the Bills to be  
paid over to the  
Treasury.

VI. The Holders of Money at present consigned in Bank, or in the Hands of whatsoever Person or Persons, derived from Deposits or Consignations made in the Hands of any former Clerk or Clerks of the Bills, in his or their official Capacity, shall and they are hereby required to pay over the same, with all Interest accrued and to accrue thereon, to the Commissioners of her Majesty's Treasury, or to such Person or Persons as they shall appoint, who are hereby empowered and directed to require an Account thereof, and to call for and receive the same, and discharge the Holders thereof: Provided always, that every Person having any legal Claim to or Interest in the Monies so to

be paid over shall have such and the like Claim and interest therein, and such and the like Right to demand and to recover the same from the said Commissioners of her Majesty's Treasury, after Payment thereof to the said Commissioners in Terms of this Act, as from the Person or Persons having Possession of such Monies at the Date of the passing of this Act.

VII. It shall be lawful for the Court of Session, and the said Court is hereby required, within Six Calendar Months after the passing of this Act, to make such Provision, by Act of Sederunt, as the said Court may deem necessary or expedient, for the Performance of the Business of the Office of the Clerk of the Bills in the said Court, and also to make, from Time to Time, by Act of Sederunt, such Alterations and further Provision for the same as the Court may deem fit: Provided always, that every such Act of Sederunt shall, within One Month after the Date thereof, be transmitted by the Lord President of the Court of Session to One of her Majesty's principal Secretaries of State, to the end that the same may be laid before both Houses of Parliament.

VIII. The recited Acts, and all Laws, Statutes, and Usages, shall be and the same are hereby repealed, in so far as necessary to give effect to this Act, but no further.

IX. This Act shall commence and take effect from and after the Expiration of Two Months from the passing hereof.

*Miscellaneous.*

Court of Session  
may make Acts of  
Sederunt.

A. of S. 10 Feb.  
1858.

Certain Acts, etc.,  
repealed.

Commencement of  
Act.

## 20° & 21° VICTORIÆ REGINÆ.

### CAP. XIX.

*An Act to remove Doubts as to the Law of Bankruptcy and Real Securities in Scotland.*—[10th August 1857.]

§ I. Short Title.—II. Court of Session or Sheriffs may award Sequestration of deceased Debtor.—III. Notice of Remit by the Sheriffs to be given in the Gazette.—IV. Expense of Competition for Office of Trustee.—V. Oath, etc., to be produced to entitle Creditor to a second Dividend.—VI. Procedure requisite in reference to subsequent Dividends.—VII. Abbreviate of Discharge of Bankrupt to be issued and recorded as in Schedule (A).—VIII. Nothing in Section 7 of 19 & 20 Victoria, cap. 91, to exclude the Application of Provisions of 10 & 11 Victoria, cap. 50, and 17 & 18 Victoria, cap. 62, to heritable Securities granted by the same.—IX. Application of Section 10 of 19 & 20 Victoria, cap. 79.—X. Recited Acts, except as altered, to remain in force.

["Bankruptcy and  
Real Securities  
Act, 1857." Ex-  
tracts regulated by  
A. of S. 10 Feb.  
1858.]

*Appeal on Stated  
Case.*

20° & 21° VICTORIÆ REGINÆ.

CAP. XLIII.

[Made applicable  
to Procedure  
under the Scotch  
Act, 23 & 24 V., c.  
84. See § 8 of that  
Act.]

*An Act to improve the Administration of the Law so far as  
respects summary Proceedings before Justices of the Peace.*  
—[17th August 1857.]

WHEREAS it is expedient that Provision should be made for obtaining the Opinion of a Superior Court on Questions of Law which arise in the Exercise of summary Jurisdiction by Justices of the Peace: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Interpretation of  
Terms.

I. In the Interpretation and for the Purposes of this Act, the following Words shall have the Meaning hereinafter assigned to them; that is to say,

"Superior Courts of Law" shall for *England* mean the Supreme Courts of Law at *Westminster*, and for *Ireland* the Supreme Courts of Law at *Dublin*:

"Court of Queen's Bench" shall mean for *England* the Court of Queen's Bench at *Westminster*, and for *Ireland* the Court of Queen's Bench at *Dublin*.

Justices on Ap-  
plication of a  
Party aggrieved to  
state a Case for the  
Opinion of Su-  
perior Court.

II. After the Hearing and Determination by a Justice or Justices of the Peace of any Information or Complaint which he or they have Power to determine in a summary Way, by any Law now in force or hereafter to be made, either Party to the Proceeding before the said Justice or Justices may, if dissatisfied with the said Determination as being erroneous in point of Law, apply in Writing within Three Days after the same to the said Justice or Justices, to state and sign a Case setting forth the Facts and the Grounds of such Determination, for the Opinion thereon of One of the Superior Courts of Law to be named by the Party applying; and such Party, hereinafter called "the Appellant," shall, within Three Days after receiving such Case, transmit the same to the Court named in his Application, first giving Notice in Writing of such Appeal, with a Copy of the Case so stated and signed, to the other Party to the Proceeding in which the Determination was given hereinafter called the Respondent.

Security and  
Notice to be given  
by the Appellant.

III. The Appellant, at the Time of making such Application, and before a Case shall be stated and delivered to him by the Justice or Justices, shall in every Instance enter into a Recognizance, before such Justice or Justices, or any One or more of them, or any other Justice exercising the same Jurisdiction, with or without Surety or Sureties, and in such Sum as to the Justice or Justices shall seem meet, conditioned to prosecute without Delay such Appeal, and to submit to the Judgment of the Superior Court, and pay such Costs as may be awarded by the same; and the Appellant shall at the same Time, and before he shall be entitled to have the Case delivered to him, pay to the Clerk to the said Justice or Justices his Fees for and in respect of the Case and Recognizances, and any other Fees to which such Clerk shall be entitled, which Fees, except such as are already provided for by Law, shall be according to the Schedule to this Act annexed marked (A), until the same shall be ascertained, appointed, and regulated in the

Manner prescribed by the Statute Eleventh and Twelfth Victoria, Chapter Forty-three, Section Thirty; and the Appellant, if then in Custody, shall be liberated upon the Recognizance being further conditioned for his Appearance before the same Justice or Justices, or, if that is impracticable, before some other Justice or Justices exercising the same Jurisdiction who shall be then sitting, within Ten Days after the Judgment of the Superior Court shall have been given, to abide such Judgment, unless the Determination appealed against be reversed.

*Procedure on Stated Case.*

IV. If the Justice or Justices be of Opinion that the Application is merely frivolous, but not otherwise, he or they may refuse to state a Case, and shall, on the Request of the Appellant, sign and deliver to him a Certificate of such Refusal; provided, that the Justice or Justices shall not refuse to state a Case where Application for that Purpose is made to them by or under the Direction of her Majesty's Attorney General for *England or Ireland*, as the Case may be.

Justices may refuse a Case where they think the Application frivolous.

V. Where the Justice or Justices shall refuse to state a Case as aforesaid, it shall be lawful for the Appellant to apply to the Court of Queen's Bench upon an Affidavit of the Facts for a Rule calling upon such Justice or Justices, and also upon the Respondent, to show Cause why such Case should not be stated; and the said Court may make the same absolute or discharge it, with or without Payment of Costs, as to the Court shall seem meet, and the Justice or Justices, upon being served with such Rule Absolute, shall state a Case accordingly, upon the Appellant entering into such Recognizance as is hereinbefore provided.

Where the Justices refuse, the Court of Queen's Bench may by Rule order a Case to be stated.

VI. The Court to which a Case is transmitted under this Act shall hear and determine the Question or Questions of Law arising thereon, and shall thereupon reverse, affirm, or amend the Determination in respect of which the Case has been stated, or remit the Matter to the Justice or Justices, with the Opinion of the Court thereon, or may make such other Order in relation to the Matter, and may make such Orders as to Costs, as to the Court may seem fit; and all such Orders shall be final and conclusive on all Parties: Provided always, that no Justice or Justices of the Peace who shall state and deliver a Case in pursuance of this Act shall be liable to any Costs in respect or by reason of such Appeal against his or their Determination.

Superior Court to determine the Questions on the Case:

VII. The Court for the Opinion of which a Case is stated shall have Power, if they think fit, to cause the Case to be sent back for Amendment, and thereupon the same shall be amended accordingly, and Judgment shall be delivered after it shall have been amended.

Its decisions to be final.

VIII. The Authority and Jurisdiction hereby vested in a Superior Court for the Opinion of which a Case is stated under this Act shall and may (subject to any Rules and Orders of such Court in relation thereto) be exercised by a Judge of such Court sitting in Chambers, and as well in Vacation as in Term Time.

Case may be sent back for Amendment.

Powers of Superior Court may be exercised by a Judge at Chambers.

IX. After the Decision of the Superior Court in relation to any Case stated for their Opinion under this Act, the Justice or Justices in relation to whose Determination the Case has been stated, or any other Justice or Justices of the Peace exercising the same Jurisdiction, shall have the same Authority to enforce any Conviction or Order, which may have been affirmed, amended, or made by such Superior Court, as the Justice or Justices who originally decided the Case would have had to enforce his or their Determination if the same had not been appealed against; and no Action or Proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such Conviction or Order, by reason of any Defect in the same respectively.

After the Decision of Superior Court, Justices may issue Warrants.

X. No Writ of Certiorari or other Writ shall be required for the

*Procedure on Stated Case.*

Certiorari not to be required for Proceedings under this Act.

Superior Courts may make Rules for Proceedings.

"Justices" to include a stipendiary Magistrate.

Recognizances, how to be enforced.

2 & 3 V., c. 71, § 45.

Appellants under this Act not allowed to appeal to Quarter Sessions.

Extent of Act.

Removal of any Conviction, Order, or other Determination in relation to which a Case is stated under this Act, or otherwise, for obtaining the Judgment or Determination of the Superior Court on such Case under this Act.

XI. The Superior Courts of Law may from Time to Time, and as often as they shall see Occasion, make and alter Rules and Orders to regulate the Practice and Proceedings in reference to the Cases hereinafter mentioned.

XII. The Words "Justice or Justices" in this Act shall include a Magistrate of the Police Courts of the Metropolis and any stipendiary Magistrate.

XIII. In all Cases where the Conditions, or any of them, in the said Recognizance mentioned, shall not have been complied with, the Justice or Justices who shall have taken the same, or any other Justice or Justices, shall certify upon the Back of the Recognizance in what respect the Conditions thereof have not been observed, and transmit the same to the Clerk of the Peace of the County, Riding, Division, Liberty, City, Borough, or Place within which such Recognizance shall have been taken, to be proceeded upon in like Manner as other Recognizances forfeited at Quarter Sessions may now by Law be enforced, and such Certificate shall be deemed sufficient *prima facie* Evidence of the said Recognizance having been forfeited: Provided, that where any such Recognizances shall have been taken in *England* before a Magistrate of the Police Courts of the Metropolis, or by any stipendiary Magistrate, all Sums of Money in which any Person or Persons shall be therein bound may, if the said Magistrate shall think fit, be levied, upon such Recognizance being forfeited, and on Nonpayment thereof, together with the Costs of the Proceedings to enforce such Payment, in the same Manner as a Police Magistrate of the Metropolis is now empowered to recover any Penalty, Forfeiture, or Sum of Money, by Section Forty-five of an Act passed in the Second and Third Years of the Reign of her present Majesty, intituled, *An Act for regulating the Police Courts in the Metropolis*, and that all and every the Provisions and Enactments contained in the said Section Forty-five shall extend to and be applicable to this Act, in as ample a Manner as if they had been herein re-enacted and made Part of the same.

XIV. Any Person who shall appeal under the Provisions of this Act against any Determination of a Justice or Justices of the Peace from which he is by Law entitled to appeal to the Quarter Sessions shall be taken to have abandoned such last-mentioned Right of Appeal, finally and conclusively, and to all Intents and Purposes.

XV. This Act shall not extend to *Scotland*.

## SCHEDULE (A.)

## FEES TO BE TAKEN BY CLERKS TO JUSTICES.

|                                                                                            | <i>s.</i> | <i>d.</i> |
|--------------------------------------------------------------------------------------------|-----------|-----------|
| For drawing Case and Copy, where the Case does not exceed Five Folios of Ninety Words each | 10        | 0         |
| Where the Case exceeds Five Folios, then for every additional Folio                        | 1         | 0         |
| For the Recognizance to be taken in pursuance of the Act                                   | 5         | 0         |
| For every Enlargement or Renewal thereof                                                   | 2         | 6         |
| For Certificate of Refusal of Case                                                         | 2         | 0         |



Registry.

## 20° &amp; 21° VICTORIÆ REGINÆ.

## CAP. XLIX.

*An Act to amend the Law relating to Banking Companies.—*  
[17th August 1857.][“ The Joint Stock Banking Companies Act, 1857.”  
See 21 & 22 V., c. 91.]

§ I. Short Title.—II. Joint Stock Companies Acts to be incorporated with this Act.

§ III. The Second Section of the Joint Stock Companies Act, 1856, shall be repealed so far as relates to Persons associated together for the purpose of Banking, subject to this Proviso, that no existing or future Banking Company shall be registered as a limited Company.

Section 2 of 19 &amp; 20 V., c. 47, repealed.

§ IV. Every Banking Company consisting of Seven or more Persons, and formed under the Acts following, or either of them, that is to say,

Banking Companies required to register under this Act.

- (1.) An Act passed in the Eighth Year of the Reign of her present Majesty, Chapter One hundred and thirteen, and intituled, *An Act to regulate Joint Stock Banks in England*;
- (2.) An Act passed in the Tenth Year of the Reign of her present Majesty, Chapter Seventy-five, and intituled, *An Act to regulate Joint Stock Banks in Scotland and Ireland*;

8 V., c. 118.

10 V., c. 75.

shall, on or before the First Day of *January* One thousand eight hundred and fifty-eight, register itself as a Company under this Act.§ V. If any Banking Company hereby required to register under this Act makes Default in registering on or before the said First Day of *January* One thousand eight hundred and fifty-eight, then, from and after such Day, until the Day on which such Company is registered under this Act, the following Consequences shall ensue; (that is to say,)

Penalty on Neglect to register.

- (1.) The Company shall be incapable of suing, either at Law or in Equity, but shall not be incapable of being made a Defendant to a Suit either at Law or in Equity.
- (2.) No Dividend shall be payable to any Shareholder in such Company.
- (3.) Each Director or Manager of the Company shall for each Day during which the Company is in Default incur a Penalty of Five Pounds, and such Penalty may be recovered by any Person, whether a Shareholder or not in the Company, and be applied by him to his own Use:

Nevertheless such Default shall not render the Company so being in Default illegal, nor subject it to any Penalty or Disability, other than as specified in this Section.

§ VI. Banking Companies permitted to register under this Act.—VII. Existing Companies not to pay Fees.—VIII. Registration under this Act not to affect Obligations incurred previously to Registration.—IX. Saving of Liabilities of Persons holding Shares before Registration under this Act.—X. Continuation of existing Actions and Suits.—XI. Certain Acts not to apply to Companies registered under this Act or Acts incorporated herewith.—XII. 7 & 8 Victoria, cap. 113, and 9 & 10 Victoria, cap. 75, repealed.—XIII. New Banking Companies.—XIV. One Third in Number and Value of Shareholders to apply for Inspectors.—XV. Section 19 of 19 & 20 Victoria, cap. 47,

*Transference of Causes.*

not applicable to Companies in Scotland.—XVI. Transfer of Trust Property to Company.—XVII. Liability of Banking Company that is not registered as such.—XVIII. Exemption of certain existing Banking Companies from Joint Stock Companies Acts.—XIX. Not to affect Provisions of 7 & 8 Victoria, cap. 32, and 8 & 9 Victoria, cap. 38.

20° & 21° VICTORIÆ REGINÆ.

CAP. LVI.

[Court of Session, 1857.]

*An Act to regulate the Distribution of Business in the Court of Session in Scotland.*—[25th August 1851.]

WHEREAS it is expedient that Provision should be made for the more convenient Distribution of the Business of the Court of Session, and for diminishing Arrears in that Court: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Power to the Lord President to take Measures for promoting Despatch of Business.

*Infra*, § 2, 3, 7.

I. It shall be lawful for the Lord President of the Court of Session, from Time to Time, as it shall appear to him to be necessary or expedient, with a view to promote the due Despatch of the Business of the Court, to transfer Causes from the One Division of the Court to the other, and from any One Lord Ordinary to any other Lord Ordinary, to such Extent as he shall judge to be necessary or expedient, for the Purpose of promoting Despatch and preventing Delay; and to enable the said Lord President to exercise such Power, it shall be lawful for him to require the Keepers of the Rolls of the respective Divisions, the principal and Depute Clerks of Session, and the Clerks of the several Lords Ordinaries, or any of them, to transmit to him, from Time to Time as he shall direct, Lists of the whole Causes depending before such Divisions respectively and the several Lords Ordinaries, and also to attend upon him from Time to Time, and give such Information in regard to such Lists, and the State of the Business generally, as he may require.

Lord President may order Lists to be prepared of Causes transferred.

II. When the said Lord President shall at any Time judge it necessary to transfer Causes from the One Division to the other, or from any One Lord Ordinary to any other Lord Ordinary, under the Power hereby given, he shall require to be prepared a List or Lists of the Causes transferred; and every such List shall have a Title specifying the Division from which, or the Lord Ordinary from

whom, and also the Division to which, and the Lord Ordinary to whom, the Transference is made, and bearing that such Transference is made by the Lord President under the Authority of this Act; and every such List shall be dated and subscribed at the End thereof by the said Lord President, and shall be effectual to operate a Transference of the Causes therein contained in Terms of the Title thereof, and the Causes shall thereafter be held to depend before the Division to which or the Lord Ordinary to whom the Transference is made in the same Manner and to the same Effect in all respects as if such Causes had originally depended before such Division or Lord Ordinary; and it shall be sufficient that the Causes shall be entered in the said Lists in the same Manner in which Causes are in Use to be entered in the Long Rolls of the Divisions or the Debate Rolls of the Lords Ordinaries: Provided always, that all Causes so transferred shall be taken from the Causes last enrolled in the Order of their Enrolment, unless, from Connexion with any depending Action or other similar Reason, it may appear proper not to transfer any particular Cause.

III. Every List of Causes transferred by the Lord President as aforesaid shall be entered in the Books of Sederunt, and shall be forthwith printed and published on the Walls of the Court, and shall also be published in the Minute Book.

IV. All summary Petitions and Applications to the Lords of Council and Session which are not incident to Actions or Causes actually depending at the Time of presenting the same shall be brought before the junior Lord Ordinary officiating in the Outer House, who shall deal therewith and dispose thereof as to him shall seem just; and in particular all Petitions and Applications falling under any of the Descriptions following shall be so enrolled before and dealt with and disposed of by the junior Lord Ordinary, and shall not be taken in the first Instance before either of the Two Divisions of the Court; viz.,

Summary Petitions.

Lists to be entered in Books of Sederunt and published.

Summary Petitions, etc., how disposed of.

As to incidental Petitions, see *A. of S.* 16 Feb. 1841, § 20, as am. by 16 July 1859.  
As to Notes, see *A. of S.* 9 July 1806.

1. Petitions and Applications under any of the various Statutes now in force relative to Entails : *See 6 & 7 W. 4, c. 42; 11 & 12 V., c. 86; 16 & 17 V., c. 94.*
2. Petitions and Applications under any of the General Railway Acts, or under the Lands Clauses Consolidation (*Scotland*) Act, 1845, or under any local or personal Act : *8 V., c. 17; 8 V., c. 19.*
3. Petitions and Applications relative to Money consigned under any Statute or Law, subject to the Order, Disposal, or Direction of the Court of Session : *See Table II., p. 88.*

*Summary Petitions.*

*As to Factories  
under Bankruptcy  
Act, see A. of S.  
25 Nov. 1857, § 80.*

*See also A. of S. 28  
Nov. 1710;  
12 & 18 V., c. 51.*

Lord Ordinary  
may consult pro-  
fessional Persons  
or Persons of  
Science or Skill.

*A. of S. 11 July  
1828, § 67.*

*Review.*

*13 & 14 V., c. 36, §  
51.*

Review of the  
Lord Ordinary by  
Interlocutor on  
Merits only  
allowed.

*Reclaiming Days  
limited to Eight.  
See 13 & 14 V., c.  
36, § 13.*

4. Petitions and Applications for the Appointment of Judicial Factors, Factors loco tutoris or loco abseatis, or Curators bonis, or by any such Factors or Curators for extraordinary or special Powers, or for Exoneration or Discharge :

5. All Petitions, Applications, and Reports under the Act of the Twelfth and Thirteenth Victoria, Chapter Fifty-one, intituled, *An Act for the better Protection of the Property of Pupils, absent Persons, and Persons under mental Incapacity in Scotland.*

V. The Lord Ordinary before whom any such Petition, Application, or Report shall be enrolled or brought shall have full Power to decide on and dispose of the same, after making such Investigation and requiring such Assistance from professional Persons, or Persons of Science or of Skill, as he shall judge proper, and his Judgment upon the Merits shall be subject to Review in Manner hereinafter provided; and the Judgment of the Lord Ordinary granting or refusing any such Petition or Application, or disposing of any such Report, unless the same shall be brought under Review in Manner hereinafter provided, shall be equally valid and effectual as a Judgment of either Division of the Court to the like Effect, according to the present Law and Practice; and all Laws and Statutes inconsistent herewith are hereby repealed to the Effect of rendering the Provisions of this Act operative and effectual: Provided always, that such Lord Ordinary may in special Cases, if he see Cause, report such Petition or Application to the Court, who may thereupon dispose of the same, or give such Instructions thereanent to the Lord Ordinary as they may deem proper.

VI. It shall not be competent to bring under Review of the Court any Interlocutor pronounced by the Lord Ordinary upon any such Petition, Application, or Report as aforesaid, with a view to Investigation and Inquiry merely, and which does not finally dispose thereof upon the Merits; but any Judgment pronounced by the Lord Ordinary on the Merits, unless where the same shall have been pronounced in Terms of Instructions by the Court on Report as hereinbefore mentioned, may be reclaimed against by any Party having lawful Interest to reclaim to the Court, provided that a Reclaiming Note shall be boxed within Eight Days, after which the Judgment of the Lord Ordinary, if not so reclaimed against, shall be final.

VII. It shall be lawful to the Parties to any Cause which shall be enrolled after the First Day of November

next in the Rolls of either Division of the Court, by a joint Note presented to the Court, to move the Court of Consent to transfer such Cause from the Rolls of the Division in which it is enrolled to those of the other Division, and such Cause shall be so transferred accordingly.

VIII. When an Issue for the Trial of any Matter of Fact, upon Report of the Lord Ordinary, in Terms of the Act of the Thirteenth and Fourteenth Years of the Reign of her Majesty, Chapter Thirty-six, shall have been adjusted by either Division of the Court, the Court shall remit the Cause to the Lord Ordinary to be farther proceeded in; provided always, that it shall be competent to the Parties to give Notice of Trial in Terms of the existing Law and Practice applicable thereto.

IV. Provided always, That the ordinary Sittings of the Court, both Inner and Outer Houses, shall henceforward be as follows; namely, the Summer Session shall in each Year commence on the first lawful Day (*Monday* excepted) which shall happen next after the Eleventh Day of *May*, and shall end on the Twentieth Day of *July*, or, when that Day shall fall upon *Sunday* or *Monday*, on the *Saturday* immediately preceding; and the Winter Session shall in each Year commence on the first lawful Day (*Monday* excepted) which shall happen next after the Eleventh Day of *November*, and shall end on the Twentieth Day of *March*, or, when that Day shall fall upon a *Sunday* or *Monday*, on the *Saturday* immediately preceding; and it shall not be lawful for the said Court to make an Adjournment at the Christmas Recess for a longer Period than Fourteen Days, any Law, Statute, or Usage to the contrary notwithstanding.

X. The Lord Ordinary on the Bills during Vacation shall have the same Powers in regard to Petitions for the Appointment of Factors loco tutoris, Curators bonis, and Judicial Factors as are by this Act conferred in relation thereto on the junior Lord Ordinary as aforesaid.

*Ordinary Sittings of Court.*

Causes may be transferred from the Rolls of One Division to the other Division.

See 58 G. 3, c. 64, § 9; 18 & 14 V., c. 86, § 33.

*Supra*, § 1-8.

Court may remit Cause to the Lord Ordinary.

*Am.* 18 & 14 V., c. 86, § 88, 41. *A. of S.* 24 Feb. 1846, *as am.* by 22 June 1859.

Sittings of the Court to be extended.

*Rep.* 2 G. 3, c. 27. *Am.* 2 & 8 V., c. 86, § 9. *See* *Ib.*, § 10, 11.

Lord Ordinary on Bills during Vacation may dispose of Petitions for Factors, etc.

*Judicial Factory.*

20° &amp; 21° VICTORIÆ REGINÆ.

CAP. LXXI.

[Lunatics Act,  
1857.]*An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland.—[25th August 1857.]*

Where Property of Lunatic not under judicial Management, and not properly applied for his Benefit, Application to be made to the Court.

§ LXXXI. Whenever the Board or the Accountant of the Court of Session shall have reason to believe or suspect that the Property of any Person detained or taken charge of as a Lunatic is not duly protected, by being placed under the Management of a Judicial Factor, and that the same, or the Income thereof, is not duly applied for his Maintenance, the Board or Accountant, as the Case may be, shall report thereon in Writing to the Lord Advocate; and it shall be competent to the Lord Advocate, in any Case in which he shall be of Opinion, either by reason of such Report, or from Inquiries made by himself or by his Order, or otherwise, that such Proceeding is expedient and proper, to make Application to the Court of Session in regard to any Person whom he believes to be detained or taken charge of as a Lunatic, setting forth that he is informed or has reason to believe or suspect that the Property of such Person is not duly protected, or that the same, or the Income thereof, is not duly applied for his Maintenance, and praying the Court to cause the Matter to be investigated, and to appoint a Judicial Factor to such Lunatic, with a view to the proper Care and Protection of his Property, and to the Application of it, or the Income thereof, to his Maintenance and Support, or to do otherwise as may be just and expedient; and the Court after such Intimation or Service, and such Investigation as they may deem fit, may appoint a Judicial Factor on the Property of such Lunatic, or may take any other Measures with a view to the Benefit of such Lunatic, and generally may do under such Application, as to them shall seem proper.

Where Property of Lunatic, though under Management of Judicial Factor, not properly applied for Benefit of Lunatic, Application to be made to the Court.

See 12 & 18 V., c. 51.

§ LXXXII. Where in the Case of any Lunatic whose Property shall, by reason of his being a Lunatic, have been placed under the Management of a Judicial Factor, the Board or the Accountant of the Court of Session shall be informed, or have reason to believe or suspect, that such Property, or the Income thereof, is not applied to the due Maintenance of such Lunatic, the Board or Accountant, as the Case may be, shall report thereon in Writing to the Lord Advocate; and it shall be competent to the Lord Advocate, in any Case in which he shall be of Opinion, either by reason of such Report, or from Inquiries made by himself, or otherwise, that such Proceeding is expedient and proper, to make Application to the Court of Session in regard to any such Lunatic as aforesaid, setting forth that he is informed, or has reason to believe or suspect, that the Property of such Lunatic, or the Income thereof, is not duly applied for the Maintenance of such Lunatic, and praying the Court to cause the Matter to be investigated, and to take such Measures with a view to the Benefit of such Lunatic, and the securing the Application of the Property or Income of such Lunatic to his due Maintenance and Support, as may be proper; and it shall be lawful for the Court to make such Orders and take such Proceedings under such Application as it may deem proper and expedient: Provided always, that nothing in this Act contained shall derogate from any Powers already possessed by the Accountant of the Court of Session, or be construed to prevent such Accountant from himself

king any Investigation or taking any Proceedings which may at present be competent at his Instance.

§ LXXXIII. The Expenses attending such Inquiries and Applications as aforesaid in reference to the Property of Lunatics shall be chargeable against the Property of the Lunatics to whom they respectively relate, and may be decreed for by the Court of Session, under any such Application as aforesaid, or be otherwise recovered in the course of Law.

§ LXXXIV. In any Case in which, after the passing of this Act, Judicial Caution falls to be taken for any Judicial Factor of a Lunatic, such Caution shall not be received as sufficient until the Accountant of the Court of Session shall approve thereof by a Marking to that Effect on the Bond of Caution; and where, with reference to any Judicial Caution received prior to the passing of this Act for any such Judicial Factor, such Accountant shall have reason to believe or suspect that the Caution found is or has become insufficient, it shall be lawful for, and the duty of, such Accountant to inquire into the matter, and, if he shall think proper, to call upon such Judicial Factor to find other or additional and satisfactory Caution, and failing such Caution being found, to bring the Matter under the Notice of the Court of Session, in the Division thereof by which such Judicial Factor was appointed, with a view to the Court making such Order on the Subject as to it may seem fit.

§ CVIII. No Proceeding for the Recovery of Penalties or Forfeitures under this Act shall be set aside for want of Form, nor shall the same be removed by Suspension, Advocation, Appeal, or otherwise, or be in any Manner subject to Review.

#### *Judicial Factory.*

Expenses incurred as to Property of Lunatics to be defrayed from such Property.

Accountant of Court of Session to see that Caution for Judicial Factors to Lunatics is sufficient.

Informalities.

## 20° & 21° VICTORIÆ REGINÆ.

### CAP. LXXX.

*An Act to amend "The Joint Stock Companies Act, 1856."*  
—[25th August 1857.]

[Joint Stock Companies Amendment, 1857. See 19 & 20 V., c. 47; 20 & 21 V., c. 14.]

**WHEREAS** it is expedient that a further Amendment should be made in "The Joint Stock Companies Act, 1856:" Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. The Joint Stock Companies Acts, 1856, 1857, shall not, nor shall either of them be deemed to have repealed, as respects Companies already formed for the Purpose of carrying on the Business of Insurance, under the Act passed in the Eighth Year of her present Majesty, Chapter One hundred and ten, or as respects Companies hereafter to be formed for the said Purpose, the said Act passed in the Eighth Year of her present Majesty, Chapter One hundred and ten, or any other Act amending the same or re-

Joint Stock Companies Acts, 1856, 1857, not to be deemed to repeal 7 & 8 V., c. 110, etc., as respects Insurance Companies.

*Insurance Companies.*

## Proviso.

lating to such Companies: Provided that if any Insurance Company, formed under the said Act of the Eighth Year of her present Majesty, or the Directors of or Shareholders in any such Company have, during the Interval between the passing of the said Joint Stock Companies Act, 1856, and of this Act, acted as if the said Act of the Eighth Year of her present Majesty had, as to such Company, been repealed by the said Joint Stock Companies Act, 1856, then so far as affects the mutual Rights and Relations of the said Company, its Directors and Officers, and late or present Shareholders, and so far as affects any Penalties which the said Company, or its Directors, Officers, or Shareholders, may have incurred by Non-observance of the said Act of the Eighth Year of her present Majesty, the said Act of the Eighth Year of her present Majesty shall, as regards the Actions of the said Company, its Directors and Shareholders, during such Interval as aforesaid, be deemed to have been repealed.

## 21° &amp; 22° VICTORIÆ REGINÆ.

## CAP. LX.

[“ The Joint Stock Companies Amendment Act, 1858.”]

*An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.*  
—[23d July 1858.]

§ I. Short Title.—II. Petition for winding-up, subject to Supervision.—III. Power of Court in proceeding under Sect. 19 of 20 & 21 Vict., c. 14, to appoint additional Liquidators.—IV. Effect of Order of Court under the said 19th Section.—V. In compulsory Winding-up, or Continuance of voluntary Winding-up, by Decree or Order. Contributories may be decreed to pay Calls.—VI. Actions and Suits to be stayed.—VII. Inspection of Books.—VIII. Appointment of voluntary Liquidators as official Liquidators.—IX. Power of Court to give Discretion to official Liquidators.—X. General Scheme of Liquidation may be sanctioned by Court.—XI. Reservation of Practice under old Winding-up Acts.—XII. Order made in *England* to be enforced in *Ireland* and *Scotland*.—XIII. Mode of dealing with Orders to be enforced by other Courts.—XIV. Power for Liquidators in voluntary Winding-up to apply to Court for Aid.—XV. Power of Company to fill up Vacancies in Liquidators.—XVI. Power for Liquidators to invest.—XVII. Manner of making a Call.—XVIII. Calls proveable against Bankrupts or Insolvents Estates.—XIX. Section 16 of 20 & 21 Vict., c. 14, repealed, and this Section to be substituted. [Liquidators shall have full Power to compromise Calls, etc.]—XX. Prosecution of delinquent Directors in the Case of voluntary Winding-up.—XXI. Prosecution of delinquent Directors, etc., in Case of compulsory Winding-up.—XXII. Application of Act to existing Winding-up.—XXIII. Companies may register for Purposes of Winding-up.—XXIV. Application of Act to other Acts.



## 21° &amp; 22° VICTORIÆ REGINÆ.

## CAP. LXXVI.

*An Act to simplify the Forms and diminish the Expense of completing Titles to Land in Scotland.*—[2d August 1858.]

[“The Titles to Land (Scotland) Act, 1858,” contains 87 Clauses.]

§ XXI. Where a Judicial Factor or other Judicial Manager shall apply by Petition for Authority to complete a Title to any Lands forming Part of the Estate under his Management, and where the Petition shall specify the Lands to which such Title is to be completed, the Warrant granted for completing such Title shall also specify the Lands to which such Title is to be completed, and such Warrant shall have the legal Operation and Effect of a Disposition of the Lands in favour of such Judicial Factor or Manager from the Party whose Estate is under judicial Management, to be holden in the same Manner as such Party held or might have held the same, except in the Case where the Subjects contained in such Warrant shall be heritable Securities, in which Case such Judicial Factor or Manager on recording such Warrant in the appropriate Register of Sasines shall be in the same Position as if such Party had granted in his Favour an Assignment of such heritable Securities, and as if such Assignment had been recorded in the appropriate Register of Sasines at the Date of recording such Warrant.

§ XXIII. Mode of relinquishing Superiorities.—XXIV. Investiture by Over Superior.

§ XXV. Where the Right of Superiority so relinquished shall form Part of an Estate held under a Deed of strict Entail, such Relinquishment shall not operate as a Contravention of such Entail, anything contained in the Deed of Entail or any Act of Parliament notwithstanding; and the Price agreed to be paid for such Superiority so relinquished, if any, shall be consigned by the Vassal in One of the chartered Banks in Scotland, subject to the Orders of the Court of Session, and shall be applicable and applied in such and the like Manner and to such and the like Purposes as Purchase Money or Compensation coming to Parties having limited Interests is made applicable, under the Lands Clauses Consolidation (Scotland) Act, 1845, or under the Act of the Eleventh and Twelfth Victoria, Chapter Thirty-six, intituled, *An Act for the Amendment of the Law of Entail in Scotland*, or under an Act of the Sixteenth and Seventeenth Victoria, Chapter Ninety-four, intituled, *An Act to extend the Benefits of the Act of the Eleventh and Twelfth Years of her present Majesty for the Amendment of the Law of Entail in Scotland*; and for that Purpose it shall be competent to the Heir of Entail in Possession to present a summary Petition to the Court of Session, praying to have the Price so applied, and such Petition shall set forth the Names, Designations, and Places of Abode of those Heirs of Entail whose Consents would be required to the Execution of an Instrument of Disentail; and on such Petition being served on such Parties, and being intimated in the Minute Book and on the Walls in common Form, it shall be competent for the Court to direct the Price to be applied to such of the said Purposes as may appear to them to be most expedient: Provided always, that where the Sums agreed to be paid for all the Superiorities which form Part of an entailed Estate shall not exceed the Sum of Two hundred Pounds such Sums shall belong to the Heir in Possession, and the Court shall direct such Sums to be paid to him: Provided also, that the Price of

Mode of completing Title by a Judicial Factor.

See 12 & 13 V., c. 51.

Am. by 28 & 24 V., c. 143, § 38.

Application of Price of entailed Superiorities.

8 V., c. 19.

11 & 12 V., c. 36.

16 & 17 V., c. 94.

*Summary Procedure, etc.*

Price of Superiorities of entailed Lands may be charged on the entailed Estate.

*See* 11 & 12 V., c. 36; 16 & 17 V., c. 94.

Diligence against apparent Heirs.

*Am. by* 23 & 24 V., c. 143, § 16.  
*See* St. 1621, c. 7; 1661, c. 24; 1672, c. 19; 1695, c. 24.

such Superiorities may be applied by the Heir in Possession to such Purposes and in such Manner as may be authorized by any private Act of Parliament authorizing the Sale of the entailed Estate or any Portion thereof, and the Application of the Price thereof.

§ XXVI. Where the Lands of which the Superiority is so relinquished shall be held by the Vassal under a Deed of strict Entail, the Vassal in such Lands shall be entitled and he is hereby authorized to grant a Bond and Disposition in Security over the entailed Estate for the full Amount of the Price paid for the relinquished Superiority, together with all Expenses incurred in the relative Proceedings, including the estimated Expense of such Bond and Disposition in Security, and his granting such Bond and Disposition in Security shall not operate as a Contravention of such Entail, anything contained in the Deed of Entail or any Act of Parliament notwithstanding: Provided always, that such Bond and Disposition in Security shall be granted with the Consent of those Heirs of Entail whose Consents would be required to the Execution of an Instrument of Disentail of the Lands, or under the Authority of a judicial Warrant or Decree of the Court of Session pronounced on a summary Petition by the Heir of Entail in Possession praying for such Warrant; and the Proceedings under such Petition shall be the same or as nearly as may be the same as the Proceedings under a Petition to charge an entailed Estate with Provisions to younger Children, as authorized by the said Acts of the Eleventh and Twelfth Victoria, Chapter Thirty-six, and Sixteenth and Seventeenth Victoria, Chapter Ninety-four: Provided always, that it shall not be necessary that such Petition should be publicly advertised in the Gazette or any Newspaper, but that Service and Intimation only shall be made in common Form.

§ XXVII. In Actions of Constitution and Adjudication against an apparent Heir on account of his Ancestor's Debt or Obligation, for the Purpose of attaching the Ancestor's heritable Estate, it shall not be necessary to raise a separate Summons of Constitution and a separate Summons of Adjudication, but both Actions may be combined in One Summons, whether the Heir renounce the Succession or not; and Actions of Constitution, and Actions of Constitution and Adjudication, against an apparent Heir, on account of his Ancestor's Debt or Obligation, for the Purpose of attaching the Ancestor's heritable Estate, and Actions of Adjudication against such Heir on account of his own Debt or Obligation, for the Purpose of attaching such Estate, may be insisted in at any Time after the Lapse of Six Months from the Date of his becoming apparent Heir, any Law or Practice to the contrary notwithstanding; and in all such Cases a Decree of Adjudication shall be held equivalent to and shall have the legal Operation and Effect of a Conveyance from such Ancestor of the Lands adjudged in favour of the Adjudger, to be holden in the same Manner as the Ancestor held or might have held the same, except in the Case where the Subjects contained in the Decree of Adjudication are heritable Securities, in which Case the Adjudger or other Party in Right of the Decree on recording the Decree in the appropriate Register of Sasines shall be in the same Position as if an Assignment of such heritable Securities had been granted in his Favour by the Ancestor whose Estate is adjudged, and as if such Assignment had been duly recorded in the appropriate Register of Sasines at the Date of recording such Decree; but the Right of the Superior to the Composition payable by an Adjudger as due under the existing Law is hereby reserved entire, and the Adjudger by recording the Decree of Adjudication in the Register of Sasines, and such Adjudger or any Person in his Right by expediting and recording in such Register a Notarial Instrument proceeding on such Decree, with or without any connecting Title, in

tue of this Act, shall become indebted in such Composition to the Superior, and shall be bound to pay the same on the Superior tendering a Charter of Confirmation, whether such Charter shall be accepted or not, and the Superior shall be entitled to recover such Composition according to Law.

*Actions for Fees,  
etc.*

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## 21° & 22° VICTORIÆ REGINÆ.

### CAP. XC.

*An Act to regulate the Qualifications of Practitioners in Medicine and Surgery.*—[2d August 1858.]

[“The Medical Act, 1858.”]

§ XXXI. Every Person registered under this Act shall be entitled according to his Qualification or Qualifications to practise Medicine or Surgery, or Medicine and Surgery, as the Case may be, in any Part of Her Majesty's Dominions, and to demand and recover in any Court of Law, with full Costs of Suit, reasonable Charges for professional Advice, and Visits, and the Cost of any Medicines or other medical or surgical Appliances rendered or supplied by him to his Patients: Provided always, that it shall be lawful for any College of Physicians to pass a Bye Law to the Effect that no One of their Fellows or Members shall be entitled to sue in Manner aforesaid in any Court of Law, and thereupon such Bye Law may be pleaded in bar to any Action for the Purposes aforesaid commenced by any Fellow or Member of such College.

Privileges of registered Persons.

§ XXXII. After the First Day of January One thousand eight hundred and fifty-nine, no Person shall be entitled to recover any Charge in any Court of Law for any medical or surgical Advice, Attendance, or for the Performance of any Operation, or for any Medicine which he shall have both prescribed and supplied, unless he shall have upon the Trial that he is registered under this Act.

None but registered Persons to recover Charges.

§ XXXVII. After the First Day of January One thousand eight hundred and fifty-nine, no Certificate required by any Act now in force or that may hereafter be passed from any Physician, Surgeon, Licentiate in Medicine and Surgery, or other medical Practitioner, shall be valid, unless the Person signing the same be registered under this Act.

No Certificate to be valid unless Person signing be registered.

## 21° & 22° VICTORIÆ REGINÆ.

### CAP. XCI.

*An Act to enable Joint Stock Banking Companies to be formed on the Principle of limited Liability.*—[2d August 1858.]

[Joint Stock Banks, 1858. See 20 & 21 V., c. 49.]

WHEREAS it is expedient to enable Banking Companies to be formed on the Principle of limited Liability: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords

*Limited Banks.*

So much of 20 & 21 V., c. 49, as prohibits Banking Companies from being registered with limited Liability repealed.

Proviso as to Bankers issuing Notes.

Registration of Banking Companies not to prejudice Re-registration as limited.

On Registration with limited Liability Notice to be given to Customers.

In default of Notice, unlimited Liability to continue as to such Customers.

Banking Company to annex a Statement to their Memorandum of Association.

Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same as follows :

I. So much of the Joint Stock Banking Companies Act 1857, as prohibits a Banking Company from being formed under that Act with limited Liability, or prohibits an existing Banking Company from being registered under that Act with limited Liability, shall be repealed, subject to the following Proviso, that no Banking Company claiming issue Notes in the United Kingdom shall be entitled to limited Liability in respect of such Issue, but shall continue subject to unlimited Liability in respect thereof, and that if necessary, the Assets shall be marshalled for the Benefit of the general Creditors, and the Shareholders shall be liable for the whole Amount of the Issue, in addition to the Sum for which they would be liable as Shareholders of a limited Company.

II. The Registration of a Banking Company under the Joint Stock Banking Companies Act, 1857, or under any other Act, shall not prejudice the Right of such Company to register itself again as a limited Company under the Joint Stock Banking Companies Act, 1857, and the Acts incorporated therewith.

III. Provided, That every Company so registering itself again as a limited Company, and every existing Banking Company which shall register itself as a limited Banking Company, shall, at least Thirty Days previous to obtaining a Certificate of Registration with limited Liability, give Notice that it is intended so to register the same to each Person and Partnership Firm who shall have a Bank Account with the Company, and such Notice shall be given either by delivering the same to such Person or Firm, or by leaving the same or putting the same into the Post addressed to him or them at such Address as shall have been last communicated or otherwise become known as his or their address to or by the Company ; and in case the Company shall omit to give any such Notice as is hereinbefore required to be given, then as between the Company and the Persons only who are for the Time being interested in such Account in respect of which such Notice ought to have been given, and so far as respects such Account and Variations thereof down to the Time at which such Notice shall be given, but not further or otherwise, the Certificate of Registration with limited Liability shall have no operation.

IV. Every limited Joint Stock Banking Company shall, before it commences Business, or, if a Banking Company already at the Time carrying on Business with unlimited Liability, before it avails itself of the Provisions of this Act, and

on the First Day of *February* and First Day of *August* in every Year during which it carries on Business, make a Statement in the Form contained in the Schedule hereto, or as near thereto as Circumstances will admit, and a Copy of such Statement shall be put up in a conspicuous Place in the registered Office of the Company, and in every Branch Office or Place where the Banking Business of the Company is carried on; and if Default is made in due Compliance with the Provisions of this Section, each Director shall be liable to a Penalty not exceeding Five Pounds for every Day during which such Default continues, and such Penalties shall be recovered in a summary Manner.

V. Limited Joint Stock Banking Companies shall be wound up in the same Manner and under the same Jurisdiction as that in and under which Joint Stock Banking Companies other than limited are required to be wound up by the Joint Stock Banking Companies Act, 1857.

*Limited Banks.*

How limited Banking Companies are to be wound up.

### *SCHEDULE REFERRED TO IN THE FOREGOING ACT.*

FORM OF STATEMENT TO BE PUBLISHED BY A LIMITED JOINT STOCK BANKING COMPANY.

The Liability of the Shareholders is limited.

The Capital of the Company is One million, divided into Ten thousand Shares of One hundred Pounds each.

The Number of Shares issued is Ten thousand.

Calls to the Amount of Twenty Pounds per Share have been made, under which the sum of One hundred and eighty thousand Pounds has been received.

The Liabilities of the Company on the First Day of *January* (or *July*) were—

|                                         | £ | s. | d. |
|-----------------------------------------|---|----|----|
| Notes issued . . . . .                  | . | .  | .  |
| Deposits not bearing Interest . . . . . | . | .  | .  |
| Deposits bearing Interest . . . . .     | . | .  | .  |
| Seven Day and other Bills . . . . .     | . | .  | .  |

Total

The Assets of the Company on that Day were—

|                                                                 |   |   |   |   |   |
|-----------------------------------------------------------------|---|---|---|---|---|
| Government Securities . . . . .                                 | . | . | . | . | . |
| Bills of Exchange . . . . .                                     | . | . | . | . | . |
| Loans on Mortgage . . . . .                                     | . | . | . | . | . |
| Other Loans . . . . .                                           | . | . | . | . | . |
| Bank Premises . . . . .                                         | . | . | . | . | . |
| Other Securities, exclusive of unpaid Calls on Shares . . . . . | . | . | . | . | . |

Total

Dated the First Day of *February* or *August* One thousand eight hundred and fifty-nine.

*Declarator.  
Verdicts.*

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## 21° &amp; 22° VICTORIÆ REGINÆ.

## CAP. XCIII.

[“Legitimacy Declaration Act, 1858.”]

*An Act to enable Persons to establish Legitimacy and the Validity of Marriages, and the Right to be deemed natural-born Subjects.*—[2d August 1858.]

Persons domiciled in Scotland may insist, on an Action of Declarator, that he is a natural-born Subject.

See 1 W. 4, c. 69, § 33.

No Proceedings to affect final Judgments, etc., already pronounced.

§ IX. Any Person domiciled in *Scotland*, or claiming any heritable or moveable Property situate in *Scotland*, may raise and insist in an Action of Declarator before the Court of Session, for the Purpose of having it found and declared that he is entitled to be deemed a natural-born Subject of her Majesty; and the said Court shall have Jurisdiction to hear and determine such Action of Declarator in the same Manner and to the same Effect, and with the same Power to award Expenses, as they have in Declarators of Legitimacy and Declarators of Bastardy.

§ X. No Proceeding to be had under this Act shall affect any final Judgment or Decree already pronounced or made by any Court of competent Jurisdiction.

## 22° &amp; 23° VICTORIÆ REGINÆ.

## CAP. VII.

[Jury Trial Amendment, 1859.]

*An Act to amend an Act of the Seventeenth and Eighteenth Years of her Majesty, for allowing Verdicts on Trials by Jury in Civil Causes in Scotland to be received, although the Jury may not be unanimous.*—[8th August 1859.]

17 & 18 V., c. 59.

See 55 G. 3, c. 42, § 34, 35.

WHEREAS by an Act passed in the Seventeenth and Eighteenth Years of the Reign of her present Majesty, intituled, *An Act to allow Verdicts on Trials by Jury in Civil Causes in Scotland to be returned, although the Jury may not be unanimous*, it was enacted, That if upon the Trial by Jury of any Civil Cause in the Court of Session in *Scotland* the Jury are unable to agree upon a Verdict, and if after having been kept in Deliberation for a Period of Six Hours, Nine of the said Jury shall agree, the Verdict agreed to by such Nine may be returned as the Verdict of such Jury, and shall be taken and shall have the same Force and Effect as if found unanimously by the whole of the said Jury: And whereas it is expedient that the said Act be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the Authority of the same, as follows :

I. If after having been kept in Deliberation for a Period of Three Hours, Nine or more of the Jury on any such Trial as in the said recited Act mentioned shall agree upon a Verdict, the Verdict agreed to by such Nine or more may then be returned, and shall be taken as the Verdict of the Jury, in like Manner and to the like Effect as is provided by the said recited Act in regard to the Verdicts thereby allowed to be returned after the Jury have been kept in Deliberation for a Period of Six Hours.

II. When in any such Trial Nine of the Jury shall not have agreed on a Verdict after such Jury has been kept in Deliberation for a Period of Six Hours, it shall be lawful for the Court or Judge, if such Court or Judge see fit, to discharge such Jury without their having given in a Verdict, in like Manner as a Jury might, prior to the passing of this Act, have been discharged without giving in a Verdict after having been kept in Deliberation for a Period of Twelve Hours.

*Verdicts.  
Arbitration.*

If after Three Hours Deliberation Nine of the Jury agree, a Verdict may be returned.

Jury may be discharged without a Verdict after Six Hours Deliberation.

22° & 23° VICTORIÆ REGINÆ.

CAP. LIX.

*An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.*—[13th August 1859.]

[Railway Companies Arbitration, 1859.]

§ XVIII. The Arbitrator, and the Arbitrators, and the Umpire respectively, may call for the Production of any Documents or Evidence in the Possession or Power of the Companies respectively, or which they respectively can produce, and which the Arbitrator, or the Arbitrators, or the Umpire, shall think necessary for determining the Matters referred, and may examine the Witnesses of the Companies respectively on Oath, and may administer the requisite Oath ; and in Scotland, may grant Diligence for the Recovery of the Documents or Evidence, and for citing Witnesses, and on Application to the Lord Ordinary he may issue Letters of Supplement or other necessary Writs in support of the Diligence.

Power for Arbitrators, etc., to call for Books, etc., and administer Oath.

*Recall and Discharge.*

23° & 24° VICTORIÆ REGINÆ.

CAP. XXXIII.

[“The Bankruptcy (Scotland) Amendment Act, 1860. See 19 & 20 V., c. 79.]

19 & 20 V., c. 79.

*An Act to amend certain Provisions in the Bankrupt Law of Scotland.*—[3d July 1860.]

WHEREAS it is expedient that certain Provisions of “The Bankruptcy (Scotland) Act, 1856,” should be amended: Be it enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Short Title.

I. This Act may be cited as “The Bankruptcy (Scotland) Amendment Act, 1860.”

Where it appears to Court of Session, etc., that the Estate ought to be distributed in England or Ireland, Sequestration may be recalled.

Am. 19 & 20 V., c. 79, § 81.

II. If in any Case where Sequestration has been or shall be awarded in Scotland it shall appear to the Court of Session or to the Lord Ordinary, upon a summary Petition by the Accountant in Bankruptcy, or any Creditor or other Person having Interest, presented to either Division of the said Court or to the Lord Ordinary at any Time within Three Months after the Date of the Sequestration, that a Majority of the Creditors in Number and Value reside in England or in Ireland, and that from the Situation of the Property of the Bankrupt or other Causes his Estate and Effects ought to be distributed among the Creditors under the Bankrupt or Insolvent Laws of England or Ireland, the said Court in either Division thereof or the Lord Ordinary, after such Inquiry as to them shall seem fit, may recall the Sequestration.

Discharge of Bankrupt may in certain Cases be refused, although no Opposition be made by Creditors.

19 & 20 V., c. 79, § 187, *et seq.*

III. The said Court, in either Division thereof, or the Lord Ordinary, or the Sheriff, may refuse the Application for the Discharge of any Bankrupt, although Two Years have elapsed from the Date of the Sequestration, and although no Appearance or Opposition shall be made by or on the Part of any of the Creditors, if it shall appear from the Report of the Accountant in Bankruptcy or other sufficient Evidence that the Bankrupt has fraudulently concealed any Part of his Estate or Effects, or has wilfully failed to comply with any of the Provisions of “The Bankruptcy (Scotland) Act, 1856.”

Interlocutors of Lord Ordinary or Sheriff subject to Review.

“Gazette” in said Act to mean Edinburgh Gazette.

IV. All Interlocutors pronounced by the Lord Ordinary or the Sheriff under the Provisions of this Act shall be subject to the Review of the said Court of Session.

V. To remove Doubts which have arisen, it is declared that the Word “Gazette” in the Sixty-seventh Section of



the said Act shall be held to mean the "*Edinburgh Gazette*;" and the Provisions contained in the said Act relative to Modes of Arrangement shall extend to and include Settlements or Arrangements by way of Composition.

VI. The Fee provided to be paid to the Sheriff under Schedule I. of the said Act is hereby abolished; but no claim shall exist in respect of any such Fee which shall have been paid prior to the passing of this Act.

VII. For attending any Meeting of Creditors or Examination a Fee of One Pound One Shilling shall be payable to the Sheriff for each such Meeting or Diet of Examination not being on the same Day.

VIII. "The Bankruptcy (*Scotland*) Act, 1856," except so far as altered by this Act, shall be and remain in full force and Effect, and shall be construed with this Act; and Words interpreted in the said Act shall when used in this Act have the same Meanings as are assigned to them respectively by the said Act.

*Labourers'  
Cottages, etc.*

19 & 20 V., c. 79, § 67.

Fee to Sheriff abolished.

Fee payable to Sheriff for Attendances, etc.  
[Re-enacts Provision abolished by previous Clause.]

Recited Act to remain in Force.

## 23° & 24° VICTORIÆ REGINÆ.

### CAP. XCV.

*An Act to facilitate the building of Cottages for Labourers, Farm Servants, and Artisans by the Proprietors of entailed Estates in Scotland.*—[13th August 1860.]

[Entail Amendment Extension, 1860.]

WHEREAS an Act was passed in the Tenth Year of the Reign of his Majesty King George the Third, intituled, *An Act to encourage the Improvement of Lands, Tenements, and Hereditaments in that Part of Great Britain called Scotland held under Settlements of strict Entail*, by which Act it was, inter alia, provided that every Proprietor of an entailed Estate who should lay out Money in enclosing, planting, or draining, or in erecting Farmhouses and Offices or Outbuildings for the same, for the Improvement of his lands and Heritages, should be a Creditor to the succeeding Heirs of Entail for Three Fourth Parts of the Money laid out in making the said Improvements; and the said Act contains various Provisions for determining the Amount and regulating the Recovery of the aforesaid Proportion of the sums expended upon such Improvements: And whereas the Provisions of the said Act have been in certain respects amended by Two Acts, the one passed in the Session of Parliament holden in the Eleventh and Twelfth Years of the Reign of her present Majesty, intituled, *An Act for the*

10 G. 3, c. 51.

11 & 12 V., c. 36.

*Labourers'  
Cottages, etc.*

16 &amp; 17 V., c. 94.

*Amendment of the Law of Entail in Scotland*, and the other passed in the Session of Parliament holden in the Sixteenth and Seventeenth Years of the Reign of her present Majesty, intituled, *An Act to extend the Benefits of the Act of the Eleventh and Twelfth Years of her present Majesty, for the Amendment of the Law of Entail in Scotland*: And whereas the Second and Third recited Acts contain various Enactments providing that Monies or Balances of Monies derived from the Sale of Portions of entailed Estates, or of Rights or Interests in or concerning such Estates, or in respect of permanent Damage done thereto, and Monies or Balances of Monies invested or held in trust for the Purpose of purchasing Lands to be entailed, may, under the Authority of the Court of Session, be applied, inter alia, in permanently improving such entailed Estates or Lands, or in Repayment of Money already expended in such Improvements: And whereas it is expedient to facilitate the Erection of Cottages for Labourers, Farm Servants, and Artisans by the Proprietors of entailed Estates in Scotland: And whereas Doubts are entertained how far the Erection of such Cottages is within the Provisions of the said Act of the Tenth Year of his Majesty King George the Third: Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Provisions of recited Acts as to Improvements of entailed Estates to include Erection of Cottages.

I. All the Provisions of the recited Acts which relate to apply to Improvements of entailed Estates shall be held and construed as including and applying to the Erection of Cottages for the Labourers, Farm Servants, and Artisans upon such Estates, in the same Manner in all respects as the Erection of such Cottages had been specified in the Ninth Section of the first recited Act among the other Improvements therein mentioned.

Erection of Cottages to be held as permanent Improvements contemplated by 11 & 12 V., c. 36; and 16 & 17 V., c. 94.

II. The Erection of Cottages for the Labourers, Farm Servants, and Artisans upon entailed Estates, or upon Lands towards the Improvement of which such Monies or Balances of Monies as aforesaid are applicable under the Powers of the Second and Third recited Acts, shall be held to be one of the permanent Improvements of such Estates or Lands contemplated by the Second and Third recited Acts; and all the Provisions of those Acts which relate to permanent Improvements of such Estates or Lands shall be held and construed as including and applying to the Erection of such Cottages.

Court or Sheriff to be satisfied that entailed Estates will be per-

III. Provided always, That nothing in this Act contained shall authorize the Creation of any Charge upon entailed Estates, or against succeeding Heirs of Entail, in respect

the Erection of Cottages, or shall authorize the Application towards the Erection of Cottages of any Monies in which succeeding Heirs of Entail are interested, unless the Court before which Proceedings in pursuance of the recited Acts, or any of them, shall be taken shall be satisfied that the said Estates or the succeeding Heirs of Entail will be permanently benefited to the Extent of the Charge so created or Monies so applied, and that the Cottages in respect of which such Charge is created, or towards the Erection of which such Monies are applied, have been completed in a proper and substantial Manner.

*Lands Clauses.*

permanently benefited, and that Cottages have been substantially erected.

23° & 24° VICTORIÆ REGINÆ.

CAP. CVI.\*

*An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.—[20th August 1860.]*

[“The Lands Clauses Consolidation Acts Amendment Act, 1860.” See 8 & 9 V., c. 19.]

WHEREAS it is expedient to extend the Provisions of the Lands Clauses Consolidation Acts, 1845, in regard to Sales of Land, or Compensation for Damages, in consideration of an annual Rentcharge, annual Feu Duty or Ground Annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Act for the Purchase of Lands wanted for the Service of the War Department or for the Defence of the Realm: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

8 & 9 V., c. 18;  
8 & 9 V., c. 19.

I. So much of the Tenth Section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the Case of Lands of which any Person is seised in fee or entitled to dispose absolutely for their own Benefit, the Consideration to be paid for any Lands, or for any Damage done thereto, shall be in a gross Sum, is hereby repealed.

Part of § 10 of recited Act repealed.

\* See Table of Public General Statutes with which the Provisions of the Lands Clauses Consolidation (Scotland) Acts, 1845 and 1860, are incorporated. —Annexed to 8 Vict., c. 19.

*Sale for Feu  
Duty.*

§ 10 and 11 of recited Act, as to Power to sell, etc., Lands for an annual Rentcharge, and to recover, extended to all Sales, etc., where Parties are under Disability.

Similar Proviso with regard to Lands sold under § 10 of 8 & 9 V., c. 19.

Amount of Rentcharge to be settled in Manner directed in the 9th Section of recited Acts.

II. The Power to sell and convey Lands in consideration of an annual Rentcharge provided by the Tenth Section of the said Act, and the Power to recover such Rentcharge provided by the Eleventh Section of the said Act, are hereby extended to all Cases of Sale and Purchase or Compensation under the said Act where the Parties interested in such Sale, or entitled to such Compensation, are under any Disability or Incapacity, and have no Power to sell or convey such Lands, or to receive such Compensation, except under the Provisions of the said Act.

III. The Power to sell and convey Lands in consideration of an annual Feu Duty or Ground Annual, under the Tenth Section of the Lands Clauses Consolidation (*Scotland*) Act, 1845, and the Power to recover such annual Feu Duty or Ground Annual, are hereby extended to all Cases of Sale, or Purchase or Compensation under the said Act, where the Parties interested in such Sale are under any Disability or Incapacity, and have no Power to sell or convey such Lands, or to receive such Compensation, except under the Provisions of the said Act.

IV. In every Case of such Sale or Compensation by any Parties other than Parties seised in fee or entitled to dispose absolutely of the Lands so sold or damaged, the Amount of such Rentcharge, annual Feu Duty or Ground Annual, hereinbefore mentioned, shall be settled in the Manner directed in the Ninth Section of each of the said Acts respectively: Provided, that the Amount of such annual Rentcharge, annual Feu Duty or Ground Annual, shall in no Case be less than One Fourth Part greater than the Net annual Rent received by the parties beneficially interested in such Lands, upon an Average of the last Seven Years; and that a Charge of Five per cent. on the gross Sum estimated or fixed as aforesaid, by way of Compensation for any Damage that may be done to the said Lands, shall in all such Cases be added to and shall form a Part of the said Rentcharge, annual Feu Duty or Ground Annual; and that no Fine, Foregift, Grassum, Premium, or other Consideration in the Nature thereof, shall be paid or taken in respect of the Lands so sold or damaged, other than the annual Rentcharge, annual Feu Duty or Ground Annual, made payable for such Lands: Provided also, that such Rentcharge shall be and remain upon and for the same Uses, Trusts, and Purposes as those upon which the Rents and Profits of the Land so conveyed stood settled or assured at or immediately before the Conveyance thereof, and shall be a First Charge on Tolls and Rates, if any, payable under the special Act.

V. In case the Promoters of the Undertaking shall be

empowered by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow Money to an Amount not exceeding a prescribed Sum, then in the event of the Promoters of the Undertaking agreeing at any Time after the passing of this Act with any Person, under the Powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only, for the Purchase of any Lands in consideration of the Payment of a Rentcharge, annual Feu Duty or Ground Annual, the Powers of the Promoters of the Undertaking for borrowing Money shall be reduced by an Amount equal to Twenty Years Purchase of any Rentcharge, annual Feu Duty or Ground Annual, so for the Time being payable.

VI. The Clauses contained in "The Lands Clauses Consolidation Act (1845)," relating to the Purchase of Lands by Agreement, and to Agreements for Sale and Conveyances, Sales, and Releases of any Lands or Hereditaments, or any Estate or Interest therein, by Parties under Disability, shall extend and be applicable to all Purchases of Land and Hereditaments for public Purposes which shall be hereafter made by the Council of any City or Borough, with the Sanction of the Commissioners of her Majesty's Treasury, under the Powers for that Purpose contained in "The Municipal Corporation Mortgages, etc., Act (1860)."

VII. For the Purchase or Acquisition of any Messuages, Lands, Tenements, and Hereditaments wanted for the Service of the Admiralty or of the War Department or for the Defence of the Realm, it shall be lawful for her Majesty's principal Secretary of State for the War Department for the Time being to use all or any of the Powers and Provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (*Scotland*) Act, 1845, given to the Promoters of the Undertaking, as therein mentioned, and for such Purposes the said principal Secretary shall be deemed and taken to be the Promoters of an Undertaking within the Meaning of the said Act, and all the Powers and Provisions thereof shall, if used by her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the Fifth and Sixth *Victoria*, Chapter Ninety-four, for the Purpose of being used and made available by the principal Officers of her Majesty's Ordnance, and had been transferred to the said principal Secretary for the Time being by the Eighteenth and Nineteenth *Victoria*, Chapter One hundred and seventeen, for the Purposes aforesaid: Provided always, that nothing herein contained shall authorize any Purchase otherwise than by Agreement of any Land, except according to the Provisions of the Twenty-third Section of the said

*Public Purposes.*

If Lands purchased by way of Rentcharge, borrowing Powers to be reduced proportionally.

Certain Clauses in 8 & 9 V., c. 18, extended to Purchases of Land, etc., for public Purposes.

Power to Secretary for War to use the Powers given to Promoters of Undertakings by 8 & 9 V., c. 18.

*Apparent Heirs,  
etc.*

This Act and 8 &  
9 V., c. 18 and 19,  
to be construed to-  
gether, etc.

Act of the Fifth and Sixth *Victoria*, or prejudice or affect the Powers and Authorities of the said principal Secretary for the Time being under the said last-mentioned Statute, or either of them.

VIII. This Act shall be read and construed as Part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (*Scotland*) Act, 1845, in all Matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal Instruments, it shall be sufficient to use the Expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

### 23° & 24° VICTORIÆ REGINÆ.

#### CAP. CXXVII.

*An Act to amend the Laws relating to Attorneys, Solicitors, Proctors, and certificated Conveyancers.*—[28th August 1860.]

[See 9 G. 4, c. 49,  
§ 9.]

§ XV. Every Person who has been admitted and enrolled as a Writer to the Signet, or as a Solicitor in the Supreme Courts of *Scotland*, or as a Procurator before any of the Sheriff Courts of *Scotland*, and who after being so admitted and enrolled has been bound by and has duly served under Articles of Clerkship in *England* or *Wales* to a practising Attorney or Solicitor for the Term of Three Years, and has been examined and sworn in Manner directed by the first herein-before mentioned Act and by this Act, may be admitted and enrolled as an Attorney and Solicitor; and Service for any Part of the said Term not exceeding One Year with the *London* Agent of such Attorney or Solicitor in the proper Business, Practice, or Employment of an Attorney or Solicitor, either by virtue of any Stipulation, or with the Permission of such Attorney or Solicitor, shall be and be deemed to have been good Service under such Articles for such Part of the said Term.

§ XXXV. This Act shall only extend to *England* and *Wales*, save as herein otherwise expressly provided.

### 23° & 24° VICTORIÆ REGINÆ.

#### CAP. CXLIII.

["The Titles to  
Land (*Scotland*)  
Act, 1860." See  
21 & 22 V., c. 76.]

*An Act to extend certain Provisions of the Titles to Land (*Scotland*) Act, 1858, to Titles to Land held by Burgage Tenure; and to amend the said Act.*—[28th August 1860.]

Diligence against  
apparent Heirs.

§ XVI. In Actions of Constitution and Adjudication against an apparent Heir on account of his Ancestor's Debt or Obligation, for the

urpose of attaching Lands held Burgage, forming Part of the Ancestor's heritable Estate, it shall not be necessary to raise separate Summonses

Constitution and Adjudication, but both Actions may be combined One Summons, whether the Heir renounce the Succession or not; and Actions of Adjudication, and Actions of Constitution and Adjudication, against an apparent Heir on account of his Ancestor's Debt or obligation, for the Purpose of attaching the Ancestor's heritable Estate, and Actions of Constitution against such Heir on account of his own Debt and Obligation for the Purpose of attaching such Estate, may be insisted in at any Time after the Lapse of Six Months from the Date of his becoming apparent Heir, any Law or Practice to the contrary notwithstanding; and in all such Cases a Decree of Adjudication shall be held equivalent to a Conveyance from such Ancestor of all Lands adjudged in favour of the Adjudger.

§ XXXVIII. Where a Judicial Factor shall apply by Petition for authority to complete a Title to any Lands held or not held Burgage forming Part of the Estate under his Management, and where the Petition shall specify the Lands to which such Title is to be completed, the Warrant granted for completing such Title shall also specify the Lands to which such Title is to be completed; and such Warrant shall be held to be a Disposition of the Lands and an Assignment of any heritable Securities contained in such Warrant in due and usual Form in favour of such Judicial Factor by the Person, whether in Life or deceased, whose Estate is under judicial Management; and where such Judicial Factor has been appointed on a Trust Estate which shall have been vested in a Trustee or former Judicial Factor, by such Trustee or former Factor, whether in Life or deceased, for the Purposes of such Trust: Provided always, that for enabling the Person in whom such Lands were last vested, or his Representatives, or other Parties interested, to bring forward competent Objections against such Warrant being granted, or Claims upon the Estate, the Court shall order such Intimation and Service of the Petition as to them shall seem proper.

*Judicial Factor.*

*See St. 1621, c. 7; 1661, c. 24; 1672, c. 19; 1695, c. 24; 21 & 22 V., c. 76, § 27.*

*Mode of completing Title by Judicial Factor on a Trust Estate, etc.*

*Am. 21 & 22 V., c. 76, § 21.*





**BOOK III.**

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**THE COURT OF SESSION**

**AS THE**

**COURT OF COMMISSIONERS**

**FOR TEINDS.**

## TABLE IV.

*A Table of Acts of the Parliament of Scotland, relative to Teind Procedures.*

- 1578, c. 62. The Gleibis of the Ministeris and Redaris sal be frie of thair Teyndis.  
 1581, c. 100. Anent Provisioun of Ministeris and certane Stipendis for thame at all Parochie Kirkis, and appointing of Commissioneris for ordering thair of.  
 1581, c. 102. That Ministeris sal be presented be the Kingis Majestie and the laick Patronis to all Benefices of Cure under Prelacyis.  
 1587, c. 29. Annexatioun of the Temporalities of Benefices to the Crown.  
 1617, c. 3. Anent the Plantatioun of Kirkis.  
 1621, c. 5. Anent the Plantatioun of Kirkis as yet unplanted.  
 1628 (Feb. 23.) Submissions and Surrenders of Teinds, etc., with  
 1629 (Sept. 18.) Majesties Decreets following thereupon.  
 1633, c. 9. The King's general Revocatione.  
 1633, c. 10. Act anent Annexatioun of his Majesties Propertie.  
 1633, c. 15. Act anent his Majesties Annuitie of Teinds.  
 1633, c. 17. Act anent the Rate and Price of Teinds.  
 1633, c. 19. Commissione for Valuations of Teinds not valued, rectifieing of the Valuations of the same already maid and other particulars thairin contenet.  
 1661, c. 61. Commission for Plantation of Kirks and Valuation of Teinds.  
 1663, c. 28. Commission for Plantation of Kirks and Valuation of Teinds.  
 1672, c. 15. Commission for Plantation of Kirks and Valuation of Teinds.  
 1685, c. 28. Act and Commission for Plantation of Kirks and Valuation of Teinds.  
 1686, c. 22. Act and Commission for Plantation of Kirks and Valuation of Teynds.  
 1689, c. 3. Act abolishing Prelacie.  
 1690, c. 23. Act concerning Patronages.  
 1690, c. 30. Act and Commission for Plantation of Kirks and Valuation of Teinds.  
 1693, c. 24. Act renewing the Commission for Plantation of Kirks and Valuation of Teinds.  
 1693, c. 26. Act anent Parsonages.  
 1707, c. 9. Act anent Plantation of Kirks and Valuation of Teinds. (Printed in this Collection.)



THE PUBLIC GENERAL STATUTES  
RELATING TO THE  
COURT OF COMMISSIONERS FOR TEINDS  
IN  
SCOTLAND.

*Abbreviations used in the Marginal Column.—*  
*Am.* = amends; *Am. by* = amended by;  
*Ext.* = extends; *Ext. by* = extended by;  
*Rep.* = repeals; *Rep. by* = repealed by.

ANNO REGNI SEXTO ANNÆ REGINÆ.

CAP. IX.

[PARLIAMENT OF SCOTLAND.]

*Act anent Plantation of Kirks and Valuation of Teinds.—*  
[21st February 1707.]

[This Act, by which the present Teind Court was established, although not a British Statute, is subsequent in Date to the Ratification of the Treaty of — Union.]

OUR Sovereign Lady, and the Estates of Parliament, considering the great Prejudice that does redound to this Nation, through the Want of an established and fixed Judicature, which may cognosce and determine in such Causes and Things, as by former Parliaments were referred to their *Commission for Plantation of Kirks and Valuation of Teinds*, and through the Loss of the Registers of that Court, which were burnt in the late Fire that happened in this Place: Therefore her Majesty and the said Estates do hereby empower, authorize, and appoint the Lords of Council and Session to judge, cognosce, and determine in all Affairs and Causes whatsoever, which, by the Laws and

*Jurisdiction of  
Court.*

48 G. 3, c. 138, etc.  
7 & 8 V., c. 44.

*Am. by 7 & 8 V., c.  
44, § 1.*

48 G. 3, c. 138, §  
15.

6 G. 4, c. 120, § 54.

Acts of Parliament of this Kingdom, were formerly referred to and did pertain and belong to the Jurisdiction and Cognizance of the Commissions formerly appointed for that Effect, as fully and freely in all respects as the said Lords do or may do in other Civil Causes, and particularly but prejudice to the generality foresaid to determine in all Valuations and Sales of Teinds, to grant Augmentations of Ministers Stipends, Prorogations of Tacks of Teinds, to disjoyn Too large Parishes, to erect and build new Churches, to annex and dismember Churches as they shall think fit, conform to the Rules laid down and Powers granted by the Nineteenth Act of the Parliament One thousand six hundred and thirty-three, the Twenty-third and Thirtieth Acts of the Parliament One thousand six hundred and ninety, and the Twenty-fourth Act of the Parliament One thousand six hundred and ninety-three, in so far as the same stand unrepealed; the transporting of Kirks, disjoyning of Too large Parishes, or erecting and building of new Kirks being always with the Consent of the Heritors of Three Parts of Four at least of the Valuation of the Parish whereof the Kirk is craved to be transported, or the Parish to be disjoyned, and new Kirks to be erected and built, the Minister in the meantime to serve the Cure in the present Kirk of the Parish; and for that Effect appoints the said Lords to meet and sit each *Wednesday* in the Afternoon during the Time of Session, and to call and discuss the said Causes summarily, conform to a Roll to be made up and kept of the samen: And for supplying the lost Registers of that Court, her Majesty and the said Estates do hereby appoint and ordain that any authentic Extracts from the said Records be brought in, and being presented to the said Lords, be recorded in a particular Register, and that the said Extracts so brought in be kept by the Lord Clerk Register and his Deputes, Clerks to be appointed by him for that Effect, as their Warrants, which shall be held and reputed as valid and authentic as the principal Warrants themselves if the same were yet extant; and the Lord Register and his Deputes are ordained to give a new Extract gratis to every Person that shall give in an old Extract immediately upon Delivery thereof; and that Extracts from these new Records shall make the like Faith in Judgment and outwith the same as the Extracts from the old Registers of the Commission were wont to do before the same were burnt: And further empowering the said Lords upon such Evidents and Admicles as they shall see Cause to make up the Tenor of such Decreets in Manner above mentioned whereof Extracts are amissing and the Registers lost in the said Fire: Declaring

by that the Lord Register and his Deputes to be appointed by him as said is shall have the sole and only Power and Privilege of raising and subscribing of the Writs and Diligences relating to the Affairs above mentioned, the same always passing her Majesty's Signet as formerly; and also declaring that the Macers of Privy Council who by their Gifts did attend and officiate before the said Commission of Parliament, shall continue to attend and officiate before the said Lords of Session in the matter committed to them by this Act as they were in use to do before the Commission, and none else: And lastly, it is hereby declared that this present Act and Commission shall be subject nevertheless to such Regulations and Alterations as shall be made by the Parliament of *Great Britain*.

*Jurisdiction of Court.*

48 G. 3, c. 138, § 16.

## 10°. ANNÆ REGINÆ.

### CAP. XII.

*An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that Part of Great Britain called Scotland.*—[1712.]

[See St. 1690, c. 28; 1693, c. 25.]

**WHEREAS** by the ancient Laws and Constitution of that Part of *Great Britain* called *Scotland*, the Presenting of Ministers to vacant Churches did of Right belong to the Patrons, until by the Twenty-third Act of the Second Session of the First Parliament of the late King *William* and Queen *Mary*, held in the Year One thousand six hundred and ninety, [intituled, *Act concerning Patronages*,] the Presentation was taken from the Patrons, and given to the Heritors and Elders of the respective Parishes; and in Place of the Right of Presentation, the Heritors and Life-renters of every Parish were to pay to the respective Patrons a small and inconsiderable Sum of Money, for which the Patrons were to renounce their Right of Presentation in all Times thereafter: And whereas by the Fifteenth Act of the Fifth Session, and by the Thirteenth Act of the Sixth Session of the First Parliament of the said King *William*, the One intituled, *An Act for encouraging of Preachers at vacant Churches be-north Forth*, and the other intituled, *Act in Favours of Preachers be-north Forth*, there are several Burdens imposed upon vacant Stipends, to the Prejudice of the Patrons Right of disposing thereof: And whereas that Way of calling Ministers has proved inconvenient, and has not only occasioned great Heats and Divisions among those who

*Presentation by  
Patrons, etc.*

The recited Act concerning Patronages, so far as it relates to Presentations by Heritors, etc., made void.

The other recited Acts repealed; and the Rights of Patrons restored.

After 1st May 1812 the Crown and others who have Right to Patronages may present qualified Ministers, and the Presbyteries shall receive them.

Not to restore the Right of Presentation to Patrons who have sold the same.

by the aforesaid Act were entitled and authorized to call Ministers, but likewise has been a great Hardship upon the Patrons, whose Predecessors had founded and endowed the Churches, and who have not received Payment or Satisfaction for their Right of Patronage from the aforesaid Heritors or Life-renters of the respective Parishes, nor have granted Renunciations of their said Rights on that Account. Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the aforesaid Act made in the Year One thousand six hundred and ninety, [intituled, *Act concerning Patronages*,] in so far as the same relates to the Presentation of Ministers by Heritors and others therein mentioned, be and is hereby repealed and made void; and that the aforesaid Fifteenth Act of the Fifth Session, and Thirteenth Act of the Sixth Session of the First Parliament of King *William*, be and are hereby likewise repealed and made void; and that in all Time coming, the Right of all and every Patron or Patrons to the Presentation of Ministers to Churches and Benefices, and the disposing of the vacant Stipends for pious Uses within the Parish, be restored, settled, and confirmed to them, the aforesaid Acts, or any other Act, Statute, or Custom to the contrary in any wise notwithstanding; and that from and after the First Day of *May* One thousand seven hundred and twelve, it shall and may be lawful for her Majesty, her Heirs and Successors, and for every other Person or Persons, who have Right to any Patronage or Patronages of any Church or Churches whatsoever, in that Part of *Great Britain* called *Scotland*, (and who have not made and subscribed a formal Renunciation thereof under their Hands) to present a qualified Minister or Ministers to any Church or Churches whereof they are Patrons, which shall, at any Time after the said First Day of *May*, happen to be vacant; and the Presbytery of the respective Bounds shall and is hereby obliged to receive and admit in the same Manner such qualified Person or Persons, Minister or Ministers, as shall be presented by the respective Patrons, as the Persons or Ministers presented before the making of this Act ought to have been admitted.

II. Provided always, That in Case any Patron or Patrons have accepted of, and received any Sum or Sums of Money from the Heritors or Life-renters of any Parish, or from the Magistrates or Town Council of any Borough, in Satisfaction of their Right of Presentation, and have discharged or renounced the same under their Hand, that nothing herein shall be construed to restore such Patron or

trons to their Right of Presentation; anything in this present Act to the contrary notwithstanding.

III. Provided also, and it is hereby enacted by the Authority aforesaid, That in case the Patron of any Church aforesaid shall neglect or refuse to present any qualified Minister to such Church that shall be vacant the said First day of *May*, or shall happen to be vacant at any Time thereafter, for the Space of Six Months, after the said First Day of *May*, or after such Vacancy shall happen, that the Right of Presentation shall accrue and belong for that Time to the Presbytery of the Bounds where such is, who are to present qualified Person for that Vacancy tanquam Jure devoluto.

IV. And be it further enacted and declared by the Authority aforesaid, That the Patronage and Right of Presentations of Ministers to all Churches which belonged to Archbishops, Bishops, or other dignified Persons, in the Year One thousand six hundred eighty-nine, before Episcopacy was abolished, as well as those which formerly belonged to the Crown, shall and do of Right belong to her Majesty, her Heirs and Successors, who may present qualified Ministers to such Church or Churches, and dispose of the vacant Stipends thereof for pious Uses, in the same Way and Manner as her Majesty, her Heirs and Successors, may do in the Case of other Patronages belonging to the Crown.

V. Declaring always, That nothing in this present Act contained, shall extend, or be construed to extend to repeal and make void the aforesaid Twenty-third Act of the Second Session of the First Parliament of the late King *William* and Queen *Mary*, excepting so far as relates to the Calling and Presenting of Ministers, and to the Disposing of vacant Stipends in prejudice of the Patrons only.

VI. And be it further enacted by the Authority aforesaid, That all and every Patron and Patrons, who have not taken, or shall not take, at any Time before his or their presenting a Minister or Ministers to any Church or Churches aforesaid, the Oath appointed to be taken by Persons in publick Trust, by an Act made in the Sixth Year of her Majesties Reign, [intituled, *An Act for the better Security of her Majesties Person and Government*,] shall, and are hereby obliged, at their signing such Presentation, to take and subscribe the aforesaid Oath before the Sheriff of the Shire, Stewart of the Stewartry, or before any Two or more Justices of the Peace of the County or Place where such Patron resides; and in case such Patron or Patrons, who have not formerly taken the aforesaid Oath, refuse or neglect to take the same at the Signing of such Presentation, that the same shall be and is hereby declared to be void, and the Right of Presentation, and of the disposing the vacant Stipends for that

*Presentation by  
Presbytery, etc.*

Patron not presenting in Six Months, the Right shall accrue to the Presbytery.

Patronages which before Episcopacy was abolished belonged to Archbishops, etc., shall belong to her Majesty, etc.

How far the 23d Act of Sess. 2, Parl. 1, W. & M., shall be repealed. 1690, Cap. 23.

Patrons to take the Oath in 6 Annæ, c. 14.

Refusing the Presentation shall be void, and the Crown shall present.

*Presentation by  
Papists.*

Known or suspected Papists shall take the Formula before they present, otherwise the Presentation shall be void, and her Majesty, etc., may present.

Time, shall belong to her Majesty, her Heirs and Successors, who may present a qualified Person to such Church or Benefice, at any Time within the Space of Six Months after such Neglect or Refusal; anything in this present Act, or in any other Act, to the contrary notwithstanding.

VII. And whereas the Right of Patronage of Churches may belong to Papists; Be it therefore enacted by the Authority aforesaid, That any Person or Persons, known or suspected to be Papists, and who have a Right of presenting Ministers, shall be obliged, at or before his or their signing any Presentation, to purge himself of Popery, by taking and signing the Formula contained in the Third Act of the Parliament of *Scotland*, held in the Year One thousand seven hundred, [intituled, *Act for preventing the Growth of Popery*;] and in case such popish Patron or Patrons shall refuse to take and subscribe the Formula aforesaid, the same being tendered to him or them by the Sheriff of the Shire, Stewart of the Stewartry, or any Two or more Justices of the Peace within their respective Jurisdiction, who are hereby impowered to administer the same, the Presentation, and the Right of disposing the vacant Stipends, shall for that Time belong to her Majesty, her Heirs and Successors, who may present any qualified Person or Persons within Six Months after such Neglect or Refusal; anything in this present Act, or any other Act, to the contrary notwithstanding.

## 48° GEORGII III. REGIS.

## CAP. CXXXVIII.

[See 50 G. 8, c. 84; and 5 G. 4, c. 72, as to Augmentation of poor Benefices.]

*An Act for defining and regulating the Powers of the Commission of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland.*—[30th June 1808.]

Scots Act, 1707, c. 9.

WHEREAS by an Act of the Parliament of *Scotland*, in the Year One thousand seven hundred and seven, intituled, *Act anent Plantation of Kirks and Valuation of Teinds*, her Majesty Queen Anne and the Estates of Parliament, empowered, authorized, and appointed the Lords of Council and Session to judge, cognosce, and determine in all Affairs and Causes which, by the Laws and Acts of the Parliament of *Scotland* had been referred, and did pertain and belong to the Jurisdiction and Cognizance of Commissioners formerly appointed for that Effect, as fully and freely in all Respects as the said Lords did or might do in other



ivil Causes; and certain Powers therein mentioned were particularly granted by the said Act; and it was thereby declared that the said Act and Commission should be subject nevertheless to such Regulations and Alterations as should be made by the Parliament of *Great Britain*: And whereas it is expedient that the Powers of the said Lords of Council and Session as Commissioners aforesaid, should in some Respects be defined and regulated; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall not be competent to the said Lords of Council and Session as Commissioners aforesaid, except as after specified, to augment or modify any Stipend which shall have been augmented or modified prior to the passing of this Act, until the Expiration of Fifteen Years from and after the Date of the last final Decreet of Modification of such Stipend.

*Modification of  
Stipends.*

Stipends modified before the passing of this Act, not to be again modified for 15 Years.

II. And be it enacted, That no Stipend which shall be augmented or modified by a Decree after the passing of this Act, shall be again augmented or modified until the Expiration of Twenty Years from and after the Date of such Decree or Modification thereof; nor shall any such Stipend be augmented or modified at any future Period until the Expiration of Twenty Years from and after the Date of the last Decree of Modification thereof respectively.

Stipends modified after the passing of this Act, not to be again modified for 20 Years.

III. Provided always, and be it enacted, That in all Processes of Augmentation or Modification, in which the Days of Compearance had elapsed, and which shall have been called in Court prior to the Twelfth Day of *March* One thousand eight hundred and eight, and which shall continue to depend before the said Lords of Council and Session as Commissioners aforesaid, at or after the passing of this Act, it shall be competent to the Pursuer either to suspend the same until Fifteen Years shall have elapsed from the Date of the last preceding Decree of Modification, or to prosecute the same to a Conclusion forthwith; and that it shall be competent to the said Lords of Council and Session as Commissioners aforesaid, either to grant or to refuse to grant an Augmentation in any such Cases, or to pronounce or to refuse to pronounce a Decreet of Modification therein: Provided always, that if the Stipend in any such depending Case shall be augmented or modified by a Decreet after the passing of this Act, the same shall not be again augmented or modified until the Expiration of Twenty Years from and after the Date of such Decree of Modifica-

Processes depending prior to March 12, 1808, may be suspended or prosecuted by the Minister.

*Modification of  
Stipends.*

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Act not to extend  
to any Cases de-  
pending, either on  
Petition, or on  
Appeal.

Where there is a  
final Decreet no  
Stipend shall be  
modified for 15  
Years,

and after the Ex-  
piration of that  
Period no Modifi-  
cation shall take  
place till the End  
of 20 Years.

Commissioners of  
Teinds may refuse  
to augment or  
modify Stipends.

tion thereof; nor shall any such Stipend be augmented or modified at any future Period, until the Expiration of Twenty Years from and after the Date of the last Decreet Modification thereof respectively.

IV. Provided further, and be it enacted, That this Act shall not be deemed or taken to extend to any Case where a Decreet of Modification having been pronounced by the said Lords of Council and Session as Commissioners aforesaid, prior to the passing of this Act, the Subject Matter whereof shall be depending, either upon Petition to the said Commissioners, or upon Appeal to the House of Lords at the Time of the passing thereof, or where it may be competent to present such Petition or such Appeal against any such Decreet of Modification, but every such Case may be proceeded in and brought to a Conclusion; and a Petition or Petitions may be presented to the said Commissioners therein, or an Appeal may be taken to the House of Lords as heretofore, and the same may be prosecuted with regard to said Petition or Appeal in the same Manner as if this Act had not been made.

V. Provided always, and be it enacted, That in such Cases aforesaid, where there shall be a final Decreet of Modification, no such Stipend shall be again augmented or modified until the Expiration of Fifteen Years from and after the Date of the final Decreet of Modification thereof, pronounced by the said Lords of Council and Session as Commissioners aforesaid.

VI. Provided likewise, and be it enacted, That where such Stipend shall, at or after the Expiration of the said Fifteen Years, be again augmented or modified by a Decree, after the passing of this Act, it shall not be again augmented or modified until the Expiration of Twenty Years from and after the Date of such Decree of Modification thereof, nor shall any such Stipend be augmented or modified, at any future Period, until the Expiration of Twenty Years from and after the Date of the last Decree of Modification thereof respectively.

VII. Provided further, and be it enacted, That in all Cases whatsoever where an Augmentation or Modification of Stipend shall have been or shall be applied for, and which shall be judged of, or a Decision pronounced therein, after the passing of this Act, by the said Lords of Council and Session as Commissioners aforesaid, it shall and may be competent to them to refuse to augment or modify any Stipend in any such Case, either on account of there being no legal Fund of Augmentation, or on account of the Circumstances of the Case; and it shall and may be competent for any Party or Parties to propone all relevant Objections

in every Case whatsoever where an Augmentation or Modification shall be applied for, and which Objections shall be determined by the said Lords of Council and Session as Commissioners aforesaid as heretofore.

*Conversion into Grain.*

VIII. And be it further enacted, That every Stipend which shall be augmented after the passing of this Act shall be wholly modified in Grain or Victual, even although Part of the Whole thereof shall have been previously modified in Money, or although Part of the Whole of the Teinds shall be Money Teind, unless where it shall appear necessary, on account of the State of the Teinds, or on account of the Interest of the Benefice, or on account of the Nature of the Articles other than Grain or Victual which have been in use to be delivered in Kind as Stipend, that a Part of the said Stipend should be modified not in Grain or Victual but in Money, or should be modified in such other Articles as have been in use, to be delivered in Kind as Stipend.

Stipends which shall be augmented shall be wholly modified in Grain or Victual unless where it shall appear necessary.

IX. And be it further enacted, That in the Case of every Decree of Modification which shall be pronounced after the passing of this Act as aforesaid, it shall and may be competent to the said Lords of Council and Session as Commissioners aforesaid, and they are hereby authorized and required to convert the said Money Stipend or Money Teind into Grain or Victual, save and except as aforesaid; and to make such Conversion into Grain or Victual according to the Fiar Prices of the Kind or Description of Grain or Victual into which the same shall be converted, as appearing from the Fiars of the County or Stewartry struck for each Year, in virtue of Authority from the Sheriff or Stewart in which the Parish shall be situated, upon an Average of such Fiar Prices for Seven Years preceding the Date of the Decreet of Modification, and exclusive of that Year in which such Decreet of Modification shall bear Date.

Money Stipends to be converted into Grain or Victual, except as aforesaid, according to the Fiar Prices of the County on Average of Seven Years.

X. Provided always, and be it enacted, That where such Parish shall not be altogether situated in the same County or Stewartry, or where no Fiars applicable to the Kind or Description of Grain modified shall be struck in the County or Stewartry wherein such Parish is situated, it shall be competent for the said Lords of Council and Session as Commissioners aforesaid, to convert the said Money into Grain or Victual, according to the Average of the aforesaid Seven Years of the Fiar Prices of Two or more of the adjoining Counties, or of such Stewartry, County or Counties, as they shall deem most suitable in the Circumstances of the Case.

Where there are no Fiars applicable in the County where the Parish is situate, the Fiar Prices may be taken from Two or more adjoining Counties.

XI. And be it further enacted, That it shall not be competent for the Lords of Council and Session as Commissioners aforesaid, where a Stipend shall, after the passing of this

Ministers not to receive Stipend in Kind, but to receive it in Money,

*Conversion.  
Procedure.*

according to the Fiar Prices of the Grain into which the same shall have been modified.

Where the Parish shall not be altogether situated in one County, Two or more Counties may be fixed upon for taking the Fiar Prices.

Conversion to be made according to the highest Fiar Price.

Right of surrendering Teinds not to be taken away.

*St.* 1683, c. 17.

Time of Meeting of Commissioners of Teinds.

Act, be modified in Grain or Victual, in whole or in part, to authorize the Minister to receive the same or any Part thereof in Kind, but that it shall only be competent for them to decree the Value thereof to be paid, or for him to receive the same in Money, according to the Fiar Prices of the Kind or Description of Grain or Victual into which the same shall have been modified, as appearing from the annual Fiars of the County or Stewartry in which the Parish, the Stipend of which shall have been so modified, shall be situated, struck in virtue of Authority from the Sheriff or Stewart, for that Crop or Year for which such Stipend, modified in Grain or Victual, shall be payable.

XII. Provided always, and be it enacted, That where any such Parish shall not be altogether situated in one and the same County or Stewartry, or where no annual Fiars applicable to the Kind or Description of Grain or Victual modified, shall be struck in the County or Stewartry wherein such Parish is situated, it shall be competent for the said Lords of Council and Session, as Commissioners aforesaid, to fix upon and specify Two or more of the adjoining Counties, or such Stewartry, County or Counties, as they shall deem most suitable in the Circumstances of the Case, according to the annual Fiar Prices of which Stewartry, County or Counties, they shall decree the Value thereof to be paid in Money.

XIII. Provided always, and be it enacted, That where there shall have been or shall be different Rates of annual Fiar Prices for any County or Stewartry, District or Place, struck in virtue of Authority from the Sheriff or Stewart, the said Conversion from Money into Grain or Victual, and from Grain or Victual into Money, in all of the Cases aforesaid, shall be made according to the highest annual Fiar Prices struck in virtue of Authority from the Sheriff or Stewart for the said County, Stewartry, District, or Place.

XIV. Provided always, and be it enacted, That the Right of any Heritor to surrender his valued Teind in place of subjecting his Lands, to the Amount of the Stipend localised upon them, shall not be taken away by what is herein enacted.

XV. And be it further enacted, That from and after the passing of this Act, the said Lords of Council and Session as Commissioners aforesaid, Nine being a Quorum, instead of meeting in the Afternoon of each *Wednesday* as heretofore, shall meet at Ten of the Clock in the Forenoon, upon the Second *Wednesday* which shall happen after the Court of Session shall have met for the Dispatch of Business in the Months of *November* and *May* in every Year respectively; and at the same Hour once a Fortnight on *Wed-*

nesday during the Sitting of the Court of Session, and at such other Times, and on such other Days, in the Months of *December, January, and March*, not being any of the Days upon which the Court of Session meet for the Dispatch of the Business of the said Court, as the said Lords of Council and Session as Commissioners aforesaid shall find necessary or proper for executing the Powers committed to them by this and the said in part recited Act.

XVI. And be it enacted, That it shall be lawful for the said Lords of Council and Session as Commissioners aforesaid, and they are hereby empowered and required to establish Rules and Regulations for abridging the Forms and Expense of Citation of Heritors and others, and for ascertaining the Facts and Circumstances of the Case, and to establish Regulations for executing the Business committed to them by the said in part recited Act of the Parliament of *Scotland*, and by the present Act, with as much Expedition and as little Expense as possible.

XVII. And, in order to guard against Collusion, and also in order that no Processes of Augmentation or for Modification of Stipends shall be raised on the Ground of alleged Collusion, be it further enacted, That every Minister insisting in the Process of Augmentation shall, after the passing of this Act, besides citing the Heritors, also cite the Moderator and Clerk of the Presbytery of the Bounds, and furnish them with a Statement of the Amount of his present Stipend, and the Addition to the Stipend which he means to crave, in order that the Presbytery, if they shall judge it proper, may appear as Parties to the Process; and, in the event of the Presbytery entering no Appearance, the Minister shall forthwith transmit to the Moderator or Clerk of the Presbytery a certified Copy of the Interlocutor pronounced by the Court; and it shall be competent to the Presbytery, within Five Months after such Interlocutor is pronounced, to enter an Appearance, and to show, if they shall see Cause, that the Decree of Modification pronounced is collusive and prejudicial to the Benefice: Provided, that if the Presbytery shall enter an Appearance in such Process, it shall be competent to the Court to subject the Minister insisting in such Process, in the Whole or any Part of the Expenses of Process incurred by the Presbytery.

XVIII. And be it further enacted, That all the Powers given and granted by the said in part recited Act to the Commissioners thereby appointed, shall remain and continue in force, and receive such and the like Effect as they do at present, excepting in so far as they are altered or repealed by this Act.

*Procedure.*

Regulations may be made for abridging the Forms and Expense of Citation, and for expediting the Business.

See 6 G. 4, c. 120, § 54.

In Cases of Augmentation, Moderator and Clerk of the Presbytery to be summoned, and furnished with Statement of present Stipend, and the Addition intended to be craved, etc.

Powers of recited Act to continue in force, except when hereby altered.

*Augmentation of  
Poor Benefices.*

50° GEORGII III. REGIS.

CAP. LXXXIV.

[Amended by 5 G.  
4, c. 72.]

*An Act for augmenting Parochial Stipends, in certain Cases,  
in Scotland.*—[15th June 1810.]

Scotch Acts re-  
specting Teinds in  
1688, recited.

WHEREAS by an Act of the Parliament of *Scotland*, made in the Year One thousand six hundred and thirty-three, intituled, *Anent the Rate and Price of Teinds*; and by another Act of the Parliament of *Scotland*, made in the same Year One thousand six hundred and thirty-three, intituled, *Commission for Valuation of Teinds not valued, rectifying the Valuations of the same already made, and other Particulars therein contained*, it was statuted, ordained, and declared, that all Heritors and Liferenters of Lands in *Scotland* should be entitled to have the Teinds or Tithes of their Lands valued at certain fixed Rates, to be paid for the same in all Time to come: And whereas in many Parishes in *Scotland* where the Stipends of the parochial Ministers are payable out of the Teinds or Tithes in consequence of the Depreciation of the Value of Money, the Stipends of such parochial Ministers have become inadequate to their Support and Maintenance, and on account of the Valuations of Teinds which have taken place, no Funds exist out of which future Augmentations of such Stipends can be granted: And whereas in several Parishes where the Stipends of the parochial Ministers are payable out of Funds and Revenues separate and distinct from the Teinds, such Stipends have also become inadequate to the Support and Maintenance of the Ministers thereof, and no Funds exist out of which such Stipends can be augmented: And whereas it is expedient that Means should be provided for augmenting the Stipends of each of such Ministers as aforesaid, to a yearly Amount or Value of One hundred and fifty Pounds Sterling, and it appears that an annual Sum not exceeding Ten thousand Pounds Sterling will be sufficient to carry these Purposes into Effect: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, there shall in every Year be set apart and appropriated in the Hands of his Majesty's Receiver General and Paymaster in *Scotland* out of the Publick Revenues and Money received and collected by him, an annual Sum, not exceeding in the whole the Sum of Ten thousand Pounds

L.10,000 yearly  
may be set apart  
in the Hands of  
the Receiver  
General in Scot-  
land for the Pur-  
poses after men-  
tioned.

of lawful Money of *Great Britain*, to answer the Purposes of this Act, to be applied in Manner hereinafter mentioned.

II. And be it further enacted, That as soon as conveniently may be after the passing of this Act, the Clerks to the different Presbyteries within *Scotland*, shall make up Accounts of the different Parishes within each Presbytery, the Stipends of which Parishes do not extend in their yearly Amount or Value to the Sum of One hundred and fifty Pounds Sterling, and which cannot be augmented to that Extent under the Laws at present in force, either by reason of the Teinds of such Parishes being already exhausted, or for other Want of Funds out of which such Augmentations could be made, or where, from the small Amount or Value of the unexhausted Teinds, it has been deemed inexpedient to bring Actions of Augmentation; which Accounts shall specify the Amount of each such Stipend in Money, Grain, or other Articles in which the same is payable, and the Rate at which such Grain or other Articles, if not in use to be paid in Kind are convertible into Money, and if in use to be paid in Kind, the Value thereof on an Average of the last Nine Years preceding the passing of this Act, and the Period when such Stipend was last augmented, and if any unexhausted Teind remains, specifying the Amount or Value thereof, as far as the same can be ascertained, and the said Accounts shall be transmitted to the Teind Clerk or principal Clerk to the Lords of Council and Session, as Commissioners for Plantation of Kirks and Valuation of Teinds appointed by an Act of the Parliament of *Scotland* in One thousand seven hundred and seven.

III. And be it enacted, That when and as soon as the Account shall be received from the Clerks to the different Presbyteries in Manner before mentioned, the same shall, upon the Application of any of the Ministers interested, or of the Procurator for the Church on behalf of the Whole, be taken into Consideration by the Lords of Council and Session as Commissioners as aforesaid, and a List or Schedule shall thereupon be made up under their Direction and Authority, of all such Stipends which from the Causes aforesaid cannot be augmented to the annual Amount or Value of One hundred and fifty Pounds, under the Laws at present in force, specifying the Amount of each Stipend in Money, Grain, or other Articles in which the same is payable, and the Rate at which such Grain and other Articles, if not in use to be paid in Kind, are convertible into Money, or if in use to be paid in Kind, the Value thereof on an Average of the last Nine Years preceding the passing of this Act, and of the Sums necessary to augment each such Stipend, including its present annual

*Augmentation of  
Poor Benefices.*

Clerks of the Presbyteries shall make up Accounts of the different Parishes, the Stipends of which do not amount to L.150.

Particulars of Stipends to be specified.

Lords of Session, as Commissioners of Teinds, to take into Consideration the List of such Stipends, and the Sums necessary to augment them to L.150; and to specify those Cases in which Teinds should be exhausted before Relief is given.

*Form of  
Modification.*

In such Cases  
Process of Modifi-  
cation for obtain-  
ing unexhausted  
Teinds shall be  
instituted.

48 G. 3, c. 138.

List of such  
Stipends, when  
made up, to be  
printed and sent  
to each Minister,  
etc.

Ministers may  
apply to Presby-  
teries if their  
Stipends be not  
specified in List,  
or if they object to  
their Stipends  
being specified.

Amount or Value to the annual Amount or Value of One hundred and fifty Pounds Sterling, provided that the said Augmentations shall not exceed in the Whole the annual Sum of Ten thousand Pounds Sterling; and in such List or Schedule it shall and may be lawful to the said Lords of Council and Session as Commissioners aforesaid, to specify those Cases in which in their Opinion the Teinds should be fully exhausted before any Relief or Augmentation should be granted under the Authority of this Act.

IV. Provided always, and be it enacted, That it shall and may be lawful in those Cases where the present Stipend does not amount to One hundred and fifty Pounds, and where the unexhausted Teinds will not be sufficient to augment it to an Amount beyond One hundred and fifty Pounds, and where the Commissioners are of Opinion that the Teinds should be in the first Instance exhausted for each Minister whose Case shall be so specified as aforesaid, forthwith to institute a Process of Modification and Augmentation for obtaining the Remainder of such unexhausted Teinds; and that it shall be lawful for the said Lords of Council and Session as Commissioners aforesaid, to award to him the Whole of such unexhausted Teinds as soon as the Course of such Process shall admit, anything in an Act passed in the Forty-eighth Year of his present Majesty's Reign, intituled, *An Act for defining and regulating the Powers of the Commission of Teinds, in augmenting and modifying the Stipends of the Clergy of Scotland*, or in any other Act or Acts, to the contrary contained in anywise notwithstanding.

V. And be it enacted, That the List or Schedule so to be made up as aforesaid, shall, under the Directions of the said Lords of Council and Session as Commissioners aforesaid, be forthwith printed, and a Copy thereof shall be sent by their Clerk to each Minister whose Stipend shall have been included in the Accounts transmitted from the Presbyteries to the said Teind Clerk, or principal Clerk of the said Lords of Council and Session, as Commissioners aforesaid, in Manner before mentioned, and a Copy to the Clerk of each Presbytery within *Scotland*, who shall thereupon give Notice to each Minister of the Presbytery of the Receipt of such printed Copy of the aforesaid List or Schedule.

VI. And be it enacted, That it shall and may be lawful to and for every Minister of the Presbytery whose Stipend shall not be specified in the said List or Schedule, but whose Stipend shall in virtue of this Act have been so specified therein, to make a Representation to the Presbytery of the Bounds, showing why his Stipend should be so specified, and for every Minister whose Stipend shall be specified in the said List or Schedule to present Objections thereto, if he



shall see cause, to such Presbytery of the Bounds ; and it shall be lawful to each Presbytery, and such Presbytery is thereby required to take such Representations and Objections into Consideration, and to report their Opinion upon each List or Schedule as the same may appear to them, to the said Lords of Council and Session, as Commissioners aforesaid : Provided always, that such Report shall be made by each Presbytery, and transmitted by the Clerk of such Presbytery to the Teind Clerk, or principal Clerk of the said Lords of Council and Session, as Commissioners aforesaid, within Six Calendar Months next after the said List or Schedule shall have been received by the Clerk of such Presbytery.

VII. And be it enacted, That if any Minister shall think himself aggrieved by any Report made by or Proceedings of any Presbytery in the Matters aforesaid, it shall and may be lawful to such Minister to present his Petition to the said Lords of Council and Session as Commissioners aforesaid, stating the Grounds of his Objection or Complaint in the Premises ; and the said Lords of Council and Session as Commissioners aforesaid, shall order such Petition to be taken into Consideration in a summary Way, and direct the same to be answered, or otherwise ; and shall determine in the Matter of such Objection or Complaint as early as the Circumstances of the Case will permit ; and such Determination shall be final and conclusive, and not subject to any Appeal to the House of Lords.

VIII. And be it enacted, That the said Lords of Council and Session, as Commissioners aforesaid, shall, with all convenient Dispatch after such Reports shall have been received from the Presbyteries as aforesaid, take the same with the Determination that may have been given on any Petition as aforesaid, and the List or Schedule formerly prepared by them into Consideration, and shall confirm the said List or Schedule, or make such Alterations thereon as to them shall seem just and expedient, and shall adjust and settle the same, and after it shall have been so adjusted and settled shall order the same to be recorded in their Books.

IX. And be it enacted, That the said Teind Clerk or Clerk to the Lords of Council and Session as Commissioners aforesaid, shall forthwith make out an Extract or certified Copy of the said recorded List or Schedule, and transmit the same to the Barons of his Majesty's Exchequer in *Scotland*, who shall appoint the same to be also forthwith recorded in their Books ; and shall thereupon issue a Precept or Warrant, addressed to his Majesty's said Receiver General and Paymaster in *Scotland*, to each of the Ministers of the respective Parishes mentioned in such List or Schedule for

*Petition to Court.*

Presbyteries to report thereon.

Ministers, thinking themselves aggrieved by such Report, may petition Commissioners of Teinds.

List of Stipends, when confirmed, shall be recorded in the Books of the Commissioners of Teinds.

Certified Copy of the recorded List to be sent to the Barons of Exchequer in *Scotland*, who shall issue Precepts to the Ministers for Payment of the Sums necessary.

*Payment of  
Stipends.*

When Commissioners shall have decided in Processes for unexhausted Teinds, and determined on augmenting Stipends, they shall prepare Lists, order them to be recorded, and sent in like Manner to the Barons of Exchequer, who shall issue Warrants for Payment, etc.

Augmentations to be paid half-yearly by the Receiver General.

Payment to such Minister, of the annual Sum, which, according to such List or Schedule, is necessary for augmenting his Stipend to the annual Amount or Value of One hundred and fifty Pounds, to be paid to him at the Terms or Times hereinafter directed during his Incumbency in the Parish mentioned in such Precept or Warrant, and shall cause such Precept or Warrant to be transmitted to the Minister therein mentioned.

X. And be it enacted, That as soon as the said Lords of Council and Session as Commissioners aforesaid shall have decided in any Process or Processes for obtaining the Remainder of any unexhausted Teinds in Manner hereinbefore directed, and shall thereupon, or upon any other Ground, have determined with respect to the Stipend or Stipends of any Minister or Ministers which ought to be augmented under the Authority of this Act, and shall have ascertained the Sum necessary for augmenting each such Stipend to the annual Amount or Value of One hundred and fifty Pounds, the said Lords of Council and Session as Commissioners aforesaid shall cause a List or Schedule of such Stipend or Stipends to be made out in Manner as hereinbefore directed, specifying the Sum necessary for augmenting each such Stipend to the annual Sum of One hundred and fifty Pounds; and such List or Schedule shall be recorded in the Books of the Teind Court, and an Extract or certified Copy thereof shall be made out in Manner hereinbefore directed, and shall be transmitted to the Barons of Exchequer, who shall cause the same to be also recorded in their Books, and shall issue their Precept or Warrant, addressed to his Majesty's said Receiver General and Paymaster in *Scotland*, to each of the Ministers of the respective Parishes mentioned in such List or Schedule, for Payment to such Minister of the annual Sum which according to such List or Schedule is necessary for augmenting his Stipend to the annual Amount or Value of One hundred and fifty Pounds, to be paid to him at the Terms or Times hereinafter directed, during his Incumbency, in the Parish mentioned in such Precept or Warrant, and shall cause such Precept or Warrant to be transmitted to the Minister therein mentioned.

XI. And be it enacted, that the Augmentations by this Act granted out of the Fund before mentioned shall be payable by Two half-yearly Payments at the Terms of *Whitsunday* and *Michaelmas* in each Year; and the First half-yearly Payment thereof shall be due and payable for the Half-year immediately preceding the Term of *Whitsunday* last; and the same shall be so expressed in the Precepts or Warrants to be issued by the Barons of Exchequer in

fanner hereinbefore directed; and at the First Term of *Whitsunday* or *Michaelmas* after the passing of this Act, or soon thereafter as the Amount of the respective Augmentations shall be fixed and settled, the said Receiver General and Paymaster shall be and is hereby required to pay to the Minister mentioned in such Precept or Warrant hereinbefore directed to be issued, or to any Person or Persons duly authorized to that Effect by such Minister, the half-yearly Payments that may be due and payable to such Minister at the Time, subject to Deduction for the First Year, in Manner hereinafter mentioned; and at every subsequent Term of *Whitsunday* or *Michaelmas* thereafter, the said Receiver General and Paymaster shall be and is hereby required to pay to such Minister, or Person or Persons authorized as aforesaid, the half-yearly Payment or Payments that may be due to such Minister at the Time.

*Payment.  
Expenses.*

XII. And be it enacted, That out of the First Year's Augmentation granted to such Ministers as aforesaid, and payable by virtue of this Act, the said Receiver General and Paymaster shall be and is hereby authorized and required to deduct and retain the Sum of One Shilling in the Pound Sterling, of the Sum payable to each of such Ministers as aforesaid, to be applied in Manner hereinafter directed, but such Deduction shall be made only from the Augmentation payable for the First Year under this Act, and no such Deduction shall be made from the Augmentation payable for any subsequent Year.

Out of the First Year's Augmentation 1s. in the Pound shall be retained,

XIII. And be it enacted, That the said Lords of Council and Session as Commissioners aforesaid, shall cause to be made up an Account of the Expenses incurred, and of the Recompence to be made to the Persons employed under the Authority of this Act, for their Labour and Trouble in the Matters aforesaid, and shall specify in such Account the Persons to whom such Expenses and Recompence shall be paid, and the Sum payable to each Person, not exceeding in the whole the Amount of the Deduction of One Shilling in the Pound, to be retained by the said Receiver General and Paymaster in Manner before mentioned, and shall certify the same to the said Barons of Exchequer; and the said Barons of Exchequer shall from Time to Time issue their Warrants upon the said Receiver General and Paymaster, for Payment to the Persons specified in such Account, or to their Order, of the several Sums of Money therein specified.

to be applied in paying the Expenses incurred, etc.

XIV. And be it further enacted, That when the Minister of any Church or Parish whose Stipend shall have been specified in any List or Schedule hereinbefore directed to be prepared by the said Lords of Council and Session, as Commissioners aforesaid, shall die or be removed from the Charge

In Cases of Death or Removal, how Successors shall act.

*Vacancies.*

of his Church or Parish, his Successor in such Church or Parish, if no Precept or Warrant had been granted to his Predecessor, shall be entitled to take all such Steps in regard to the obtaining of such Precept or Warrant as would have been competent to his Predecessor, but shall be as he is hereby bound and obliged to account for and pay to his Predecessor, or to the Executors or personal Representatives of his Predecessor, whatever Part of the Augmentation granted under the Authority of this Act shall be due to such Predecessor, or to the Executors or personal Representatives of such Predecessor respectively; and if such Precept or Warrant had previously been granted, the Minister succeeding to such Church or Parish shall be entitled to apply to the said Barons of Exchequer to be put in the Place and Stead of the Minister so dying or being removed as aforesaid, with respect to future Payments under this Act, in the Manner hereinafter mentioned; and the said Barons of Exchequer, upon being satisfied that the Minister so applying has succeeded to the Church or Parish of the Minister so dying or being removed as aforesaid, shall forthwith issue a Precept or Warrant to the said Receiver General and Paymaster in favour of the Minister so applying for Payment to him of the Sums which were payable to the former Minister of such Church or Parish at the Terms or Times hereinbefore directed, during his Incumbency in the Church or Parish mentioned in such Precept or Warrant, and shall cause such Precept or Warrant to be transmitted to the Minister therein mentioned; and the Sums therein mentioned shall be payable and be paid upon such Precept or Warrant by the said Receiver General and Paymaster to the Minister mentioned therein, or to any Person or Persons duly authorized to that Effect, at the Term or Terms, and in Manner hereinbefore directed; and so on, as often as the Case shall happen, with respect to all the Ministers who shall succeed to any Church or Parish, the Stipend of which shall be inserted in any such List or Schedule as aforesaid.

In case of Death or Removal, Rights of Ministers to Augmentations under this Act to cease in like Manner as their Rights in other Stipends cease.

XV. Provided always, and be it enacted, That the Rights and Interests of the respective Ministers who may be entitled to the Augmentations to be granted under the Authority of this Act, shall, in case of their Decease or Removal, cease and determine at the same Terms of *Whitsunday* or *Michaelmas*, and in the same Manner, as the Rights and Interests of the Clergy of *Scotland* in their other Stipends cease and determine by the Law of *Scotland*; and that in like Manner the Rights and Interests of their Successors to the said Augmentations to be granted under the Authority of this Act, shall commence at the Terms of *Whitsunday* or *Michaelmas* immediately preceding their Admission to their

spective Churches or Parishes, in the same Manner as the Rights and Interests of the Clergy of *Scotland* to their other stipends, do commence by the Law of *Scotland*.

XVI. Provided also, and be it enacted, That the Executors or personal Representatives of the Ministers deceasing, whose Stipends shall be augmented under the Authority of this Act, and the Executors or personal Representatives of their Successors, shall be entitled to draw One half-yearly Moiety of the Augmentations to be granted under the Authority of this Act, in Name of *Ann*, over and above the Stipends that may have been due to the Ministers deceasing, in the same Manner as is directed by the Law of *Scotland* with respect to the other Stipends of the Clergy of *Scotland*; and the Barons of his Majesty's Exchequer shall grant Precepts or Warrants to his Majesty's said Receiver General and Paymaster, for Payment of the said half-yearly Moiety in Name of *Ann*, to those having Right hereto by the Law of *Scotland*, upon their Receipt; and his without the Necessity of any Confirmation or other Title to be made up in that Behalf.

XVII. And be it enacted, That when the pastoral Charge in any of the Churches or Parishes, the Stipends of which shall be augmented as hereinbefore mentioned, shall at any Time hereafter become vacant, the several Sums hereinbefore directed to be appropriated for augmenting such Stipends respectively, shall not during any such Vacancy (excepting only with regard to the half-yearly Moiety in Name of *Ann*, directed to be paid as hereinbefore specified) be applicable to the Purposes to which vacant Stipends in *Scotland* are at present by Law applicable; nor shall they in any such Case be subject as vacant Stipends are to the Disposal of the Patrons of such vacant Parishes, or of the Barons of his Majesty's Exchequer in Parishes of which his Majesty is Patron, or of the Synods of *Argyll* or *Glenelg*, which have or claim to have a Right by Law to dispose of the vacant Stipends within their Bounds.

XVIII. And be it further enacted, That in the Event of every Vacancy occurring in the Parishes in which the parochial Stipends shall have been augmented under the Authority of this Act, the annual Sums hereinbefore directed to be appropriated for augmenting the Stipends hereinbefore mentioned, shall, after Payment of the *Ann* in Manner before directed, during any Vacancy in any of the said Churches or Parishes, be payable and be paid to the Trustees appointed by the Act of the Nineteenth Year of the Reign of his present Majesty, intituled, *An Act for the better raising and securing a Fund for a Provision for*

#### Vacancies.

Executors may draw for One half-yearly Moiety of Augmentation, beyond what may be due.

Augmentations not to be paid during Vacancies,

but to be applied to the Fund for the Provision of Widows and Children of Clergymen, by 19 G. 3, c. 20.

*Management of Fund.*

*the Widows and Children of the Ministers of the Church of Scotland, and of the Heads, Principals, and Masters in the Universities of Saint Andrews, Glasgow, Edinburgh, and Aberdeen; and for repealing Two Acts made in the Seventeenth and Twenty-second Years of the Reign of his late Majesty King George the Second, for those Purposes, or to their general Collector, to be applied by the said Trustees in the Way they shall judge most expedient and effectual for securing a permanent Addition to the Annuities provided to the Widows therein mentioned, in all Time coming.*

The Barons of Exchequer shall issue their Precept for Payment to the Trustees of the said Fund,

XIX. And be it enacted, That when any such Vacancy shall occur, the said Barons of Exchequer shall, upon the Application of the said Trustees or their general Collector, issue their Precept or Warrant to the said Receiver General and Paymaster, for Payment to the said Trustees or their general Collector, as aforesaid, of the whole Amount of the Sums directed to be appropriated under the Authority of this Act in Augmentation of the Stipend of the said vacant Church or Parish, at the same Term or Terms at which vacant Stipends are at present by the Law of Scotland payable to Patrons and others having Interest therein.

who may lend out the Money at Interest for its Benefit.

XX. And be it further enacted, That it shall and may be lawful to and for the said general Collector, under the Authority and by the Directions of the said Trustees, and according to such Regulations as they shall judge expedient, to lend out at Interest, on sufficient Security, the several Sums hereby appointed to be paid to the said Trustees or their general Collector by the said Receiver General and Paymaster as aforesaid, from Time to Time, for the Purpose of providing a permanent Fund, in addition to the Annuities before mentioned, established under the Authority of the said recited Act of the Nineteenth Year of the Reign of his present Majesty.

Payments made by the Receiver General to be allowed in his Accounts.

XXI. And be it enacted, That all Payments to be made by the said Receiver General and Paymaster, of the several Sums of Money hereinbefore directed to be paid by him to the several Persons and for the several Purposes hereinbefore mentioned, upon the Receipts of those legally entitled or authorized to receive the same, shall be allowed in his Accounts.

Precepts and Receipts exempted from Stamp Duty.

XXII. And be it enacted, that the several Precepts or Warrants to be issued in Manner before mentioned, and the Receipts to be granted for the Sums of Money payable as hereinbefore directed, shall not be liable to any Stamp Duty.

Punishment of Persons forging Precepts or Receipts, etc.

XXIII. And be it enacted, That if any Person or Persons shall forge or counterfeit, or cause or procure to be forged or counterfeited, any such Precept or Warrant, or

Receipts or Warrants as aforesaid, or any Signature or Signatures thereto, or any written Factory or Mandate, for receiving any Sum or Sums of Money made payable under the Authority of this Act, or any Signature or Signatures thereto, or any Receipt or Receipts granted on Payment of such Sums of Money as aforesaid, or Signature or Signatures thereto, and shall issue the same with an Intent to defraud the said Receiver General and Paymaster or his Successors in Office, or any Person or Persons entitled to any Sum or Sums of Money payable under the Authority of this Act, then every Person so offending and being hereof lawfully convicted, shall be punished as Persons guilty of the Crime of Forgery are liable to be punished by the Law of Scotland.

*Management of Fund.*

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XXIV. And be it enacted, That no Fees or Expenses whatsoever shall be charged by or paid to any Clerks or Officers of the said Lords of Council and Session as Commissioners aforesaid, or of the said Barons of Exchequer, or the said Receiver General and Paymaster, or any Clerk or Officer employed by or under him, save and except the Expenses and Recompence for the First Year, to be ascertained in the Account of the same, to be made up and paid in Manner before directed.

No Fees to be paid to Officers, etc.

XXV. And be it enacted, That the said Lords of Council and Session as Commissioners aforesaid, and the said Barons of Exchequer, shall and may from Time to Time give such Directions for the Regulation of their respective Clerks and Officers employed, or that may be employed to carry this Act into Execution, where special Directions are not hereby given relative to the same, as to the said Lords of Council and Session as Commissioners aforesaid, and to the Barons of Exchequer shall seem fit and expedient.

Commissioners of Teinds and Barons of Exchequer may give Directions for the Regulation of their Clerks.

## 52° GEORGII III. REGIS.

### CAP. CXXXI.

*An Act to exempt from the Duties of One Shilling and Sixpence in the Pound, certain Augmentations made to the Stipends of Parishes in Scotland.*—[18th July 1812.]

WHEREAS an Act passed in the Fiftieth Year of the Reign of his present Majesty, intituled, *An Act for augmenting parochial Stipends in certain Cases in Scotland*: And whereas it is expedient that certain of the Augmenta-

50 G. 3, c. 84.

Pension Duty.

49 G. 3, c. 82.

Augmentations  
not extending to  
£.150 yearly ex-  
empted.

tions made under the said recited Act should be exempted from the Duties of One Shilling and Sixpence respectively payable under the Provisions of an Act passed in the Forty-ninth Year of the Reign of his present Majesty, intituled *An Act for continuing and making perpetual several Duties of One Shilling and Sixpence, repealed by an Act of the last Session of Parliament, on Offices and Employments of Proctors, and on Annuities, Pensions, and Stipends, and thereunto granted for One Year to the Twenty-fifth Day of May One thousand eight hundred and nine*: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Augmentations made and payable, or paid under or by virtue of the Provisions of the said recited Act of the Fiftieth Year aforesaid, to the Stipend of any Parish in Scotland which do not extend in their yearly Amount or Value to the Sum of One hundred and fifty Pounds Sterling, shall be chargeable or charged with the Duties of One Shilling and Sixpence, continued and made perpetual by the said recited Act of the Forty-ninth Year of his Majesty's Reign aforesaid, or either of them, or any Part thereof, anything to the contrary notwithstanding.

## 53° GEORGII III. REGIS.

## CAP. LXIV.

[See Sections 4  
and 5.]

*An Act for the better Regulation of the Court of Session in Scotland.*—[3d June 1813.]

## 1° &amp; 2° GEORGII IV. REGIS.

## CAP. XXXVIII.

[By § 10 the Court of Session is empowered to pass Acts of Sederunt for the Regulation of Procedure in Processes of Augmentation and Locality.]

*An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session, and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts.*—[28th May 1821.]

[These two Acts are printed in Book II., COURT OF SESSION.]



*Recital.*

## 5° GEORGII IV. REGIS.

## CAP. LXXII.

*An Act for amending and rendering more effectual an Act for augmenting Parochial Stipends, in certain Cases, in Scotland.*—[17th June 1824.] [Amends 50 G. 3, c. 84.]

WHEREAS an Act passed in the Fiftieth Year of the Reign of his late Majesty King *George* the Third, entitled, *An Act for augmenting parochial Stipends in certain Cases in Scotland*, by which it was enacted, that as soon as conveniently might be after the passing thereof, the Clerks of the different Presbyteries within Scotland should make up Accounts of the different Parishes within each Presbytery, the Stipends of which Parishes did not extend in their yearly Amount to the Sum of One hundred and fifty Pounds Sterling, and which could not be augmented to that Extent under the Laws then in force; and upon receiving such Accounts, the same were directed to be taken into Consideration by the Lords of Council and Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, and a List or Schedule should thereupon be made up, under their Direction and Authority, of all such Stipends which from the Causes mentioned in the said recited Act could not be augmented to the annual Amount or Value of One hundred and fifty Pounds under the Laws then in force, specifying the Amount of each Stipend, in Money, Grain, or other Articles in which the same was payable, and the Rate at which such Grain or other Article, if not in use to be paid in Kind, were convertible into Money, and if in use to be paid in Kind, the Value thereof on an Average of the last Nine Years preceding the passing of said Act; and so soon as the Lords of Council and Session, as Commissioners foresaid, should have determined with respect to the Stipend or Stipends of any Minister or Ministers which ought to be augmented under the Authority of the said recited Act, the said Lords of Council and Session, as Commissioners foresaid, should cause a List or Schedule of such Stipend or Stipends to be made out in Manner directed by the said recited Act, specifying the Sum necessary for augmenting each such Stipend to the annual Sum of One hundred and fifty Pounds, and an Extract or certified Copy thereof, made out in the Manner therein directed, should be transmitted to the Barons of Exchequer, who should issue their Precept or Warrant, addressed to his Majesty's Receiver

Lists of Parishes.

Lists of Parishes, the Stipends of which do not extend to the yearly Value of L.150, and which cannot be augmented, etc., as directed by the said recited Act, to be made now and once in every Five Years by the Clerks of the Presbyteries, and transmitted to the Teind Clerk.

General and Paymaster in *Scotland*, to each of the Ministers of the respective Parishes mentioned in such List or Schedule, for Payment to such Minister of the annual Sum which according to such List or Schedule is necessary for augmenting his Stipend to the annual Amount or Value of One hundred and fifty Pounds, to be paid to him at the Terms or Times therein directed during his Incumbency: And whereas by the Alteration in the Price of Grain and other Circumstances, most of the Stipends included in the present Lists have been considerably reduced below the said Sum of One hundred and fifty Pounds, and it is expedient that the Amount of such Stipends should from Time to Time be reconsidered, so as to secure to the Incumbents of such Parishes a Stipend of One hundred and fifty Pounds each at all Times, as nearly as may be: And whereas it is also expedient that some additional Provision should be made in certain Cases for such of the parochial Clergy of *Scotland* as cannot, according to Law, be provided with a Manse or Glebe: And whereas an annual Sum not exceeding Two thousand Pounds, in addition to the Sum provided by the before recited Act, will be sufficient to carry these Purposes into Effect: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That as soon as conveniently may be after the passing of this Act, and from Time to Time once in Five Years, at the Expiration of each successive Five Years in all Time hereafter, the Clerks to the different Presbyteries within *Scotland* shall make out Accounts in the Manner directed by the said recited Act, of the different Parishes within each Presbytery, the Stipends of which Parishes do not at the Time extend in their yearly Amount or Value to the Sum of One hundred and fifty Pounds Sterling, and which cannot be augmented to that Extent under the Laws at present, or to be then in force, by reason of the Causes mentioned in the said recited Act, which Accounts shall specify the Amount of each such Stipend in Money, Grain, or other Articles, according to an Average of the last Five Years preceding the Date of making out the same respectively, and the said Accounts shall be transmitted to the Teind Clerk, or principal Clerk of the Lords of Council and Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, who shall thereupon proceed in the Manner directed by the said recited Act to take the same into Consideration, and to adjust and settle the same; and so soon as the said Lords of Council and Session, as Commissioners aforesaid, shall

have adjusted and settled any such List or Schedule, or shall have ascertained the Sum necessary for augmenting each such Stipend, in the Manner directed by the said recited Act, as often as the same is required to be done by this Act, to the annual Amount or Value of One hundred and fifty Pounds, the said Lords of Council and Session, as Commissioners aforesaid, shall cause a List or Schedule, or Lists or Schedules, to be made out in the Manner directed by the said recited Act, specifying the Sum necessary for augmenting each such Stipend to the annual Sum of One hundred and fifty Pounds, and every such List or Schedule shall be recorded and transmitted in the Manner directed by the said recited Act; and the said Barons of Exchequer shall issue their Precept or Warrant, addressed to his Majesty's said Receiver General and Paymaster for *Scotland*, to each of the Ministers mentioned in any List or Schedule made up under the Authority of this Act, for Payment to such Minister of the annual Sum which, according to such List or Schedule, shall appear to be necessary for augmenting his Stipend to the annual Amount or Value of One hundred and fifty Pounds, to be paid him during his Incumbency, and to his Successor, at the Terms or Times and in the Manner directed by the said recited Act, unless and until an Alteration shall take place in the Manner hereinafter directed.

II. And whereas in some Parishes in *Scotland* the Ministers thereof have small Stipends, and are not provided with a Manse or a Glebe, and it is reasonable that in such Cases an additional Stipend should be paid to such Ministers, as some Compensation for the Want thereof; be it therefore enacted, That as soon as conveniently may be after the passing of this Act, the Clerks to the different Presbyteries within *Scotland* shall make up a List or Lists of any Parish or Parishes within each Presbytery the Minister whereof is without a Manse and Glebe, and of any Parish or Parishes the Minister whereof is without a Manse, and of any Parish or Parishes the Minister whereof is without a Glebe, the Stipend of any which Minister shall be under the Amount or Value of Two hundred Pounds per annum; and every such List shall be transmitted to the said Teind Clerk, or principal Clerk to the said Lords of Council and Session as Commissioners aforesaid.

III. And be it further enacted, That after such List shall have been received by such Teind or principal Clerk, it shall and may be lawful for the said Lords of Council and Session as Commissioners aforesaid, upon the Application of any of the Ministers interested, or of the Procurator of the Church on behalf of the whole, to inquire into the

*Lists of Parishes.*

Lists of Parishes where there is no Manse or Glebe to be made up in like Manner.

Commissioners of Teinds to inquire into the Circumstances of the Case, and to make up Lists or Schedules of such Parishes where the

*Lists of Parishes.*

Stipends are under L.200 and cannot be provided with Manse or Glebe, and of the Sum which ought to be allowed, which Lists shall be recorded in the Teind Court.

Circumstances of the Case, and if they shall find that the Stipend in any Parish is under the annual Amount or Value of Two hundred Pounds, and that the Minister cannot be provided with a Manse and a Glebe, or with a Manse or a Glebe, as the Case may be, they are hereby directed to cause a List or Schedule of every such Parish where the Minister cannot be so provided to be made out, and of the Sum which ought to be allowed in respect of the Want thereof, as the Case may be, but so as that the total Amount of the Stipend shall not exceed Two hundred Pounds per annum in any Case where the Minister is without both Manse and Glebe, or One hundred and eighty Pounds where the Minister is without a Manse or a Glebe, as the Case may be, and cannot be provided with the same respectively; and every such List or Schedule shall be recorded in the Books of the Teind Court, and an Extract or certified Copy thereof shall be made out and transmitted to the Barons of Exchequer, who shall cause the same to be also recorded in their Books, and shall issue their Precept and Warrant, addressed to his Majesty's said Receiver General and Paymaster in *Scotland*, to the Minister of the Parish, or to each of the Ministers of the respective Parishes mentioned in such List or Schedule, for Payment to such Minister of the annual Sum which according to such List is to be paid to him in respect of the Want of a Manse and Glebe, or the Want of a Manse or Glebe, as the Case may be, during his Incumbency in the Parish mentioned in such Precept or Warrant, at the Terms and Times, and in the same Manner as the augmented Stipends settled by the said recited Act of Parliament are thereby directed to be paid to the said respective Ministers entitled to the same.

Every Five Years Clerks of Presbyteries to make out Accounts of the Stipends to which Additions have been made, and when Stipends are found to be L.5 per annum less than the Sum allowed, they shall transmit an Account of such Stipends to the Teind Clerk, that an Increase may be made.

IV. And whereas from the Alteration of Circumstances it may from Time to Time happen, that the Sum to be allowed to some of such Ministers to make up their Stipends to the Sums allowed by this Act, may fall below the Sums respectively; be it therefore enacted, That once in every Five Years in all Time hereafter, and at the Expiration of Five Years from the Date of each such Transmission, the Clerks to the different Presbyteries in *Scotland* shall make out Accounts of the Amounts of the different Stipends to which Additions shall have been made, as directed by this Act; and whenever such Clerks shall find any such Stipend to be Five Pounds per annum less than the Sum allowed pursuant to this Act, according to the average Prices of Grain in the County in which such Parish shall be situated for the Five Years immediately preceding, the said Clerk shall transmit an Account of such Stipends to the Teind Clerk, or principal Clerk of the said Lords of Council and

Session as Commissioners aforesaid, who shall thereupon proceed to increase each such Stipend, so as to make the Sum to be thereafter allowed amount as nearly as may be to the Sum allowed under this Act, according to the average Prices of Grain for Five Years preceding the Date of such Transmission of Accounts respectively; and so soon as the said Lords of Council and Session shall have adjusted and settled or ascertained the Sum necessary so to be allowed according to such Diminution, as the Case may be, as often as the same is directed by this Act, the said Lords of Council and Session shall cause a List or Schedule, Lists or Schedules, to be made out in the Manner directed by the said recited Act and this Act, specifying the Sum thenceforth to be issued, until an Alteration in the Amount of such Sum shall take place in the Manner directed by this Act; and every such List or Schedule shall be recorded, and thereafter transmitted, in the Manner above directed in the Case of the first Allowance under this Act; and the said Barons of Exchequer shall issue their Precept or Warrant to his Majesty's said Receiver General and Paymaster for Scotland, to each of the Ministers mentioned in any such List or Schedule, for Payment to such Minister of the annual Sum which, according to such List or Schedule, is to be paid to him during his Incumbency, and to his Successor, at the Term or Times and in the Manner directed by the said recited Act, unless and until an Alteration shall take place in the Manner directed by this Act.

Augmentation.

V. Provided always, and be it enacted, That the Augmentations of Stipends authorized to be made by this Act, shall not exceed in any One Year the Sum of Two thousand Pounds Sterling over and above and in addition to any Balance of the Sum of Ten thousand Pounds granted by the said recited Act, remaining unapplied for the Purposes thereof.

Not more than to the Amount of £.2000 to be allowed in any One Year.

VI. And be it enacted, That all the Directions given by the said recited Act, with respect to the Matters and Things thereby appointed to be done, shall be observed and followed in executing this Act, as far as such Directions are not inconsistent with the same.

Directions given by recited Act to be observed in executing this Act.

VII. And whereas by an Act passed in the Fifty-fifth Year of the Reign of his said late Majesty, intituled; *An Act for granting to his Majesty certain Sums out of the respective Consolidated Funds of Great Britain and Ireland, and for applying certain Monies therein mentioned for the Service of the Year One thousand eight hundred and fifteen, and for further appropriating the Supplies granted in this Session of Parliament*, a Sum of Ten thousand Pounds was granted to his Majesty to make Provision for the Augmentation of the Maintenance of the poor Clergy of the Esta-

55 G. 3, c. 187.

*Repeal.*

58 G. 3, c. 101.

59 G. 3, c. 183.

Grants for the  
poor Clergy under  
recited Acts re-  
pealed.

blished Church of *Scotland*, to be issued and appropriated pursuant to the Provisions of an Act passed or to be passed for that Purpose: And whereas, by an Act passed in the Fifty-eighth Year of the Reign of his late Majesty, intituled, *An Act for applying certain Monies therein mentioned for the Service of the Year One thousand eight hundred and eighteen*, a further Sum of Ten thousand Pounds was granted for a similar Purpose, to be issued and appropriated in a similar Manner: And whereas, by another Act, passed in the Fifty-ninth Year of the Reign of his said late Majesty, intituled, *An Act for applying certain Monies therein mentioned for the Service of the Year One thousand eight hundred and nineteen, and for further appropriating the Supplies granted in this Session of Parliament*, a further Sum of Ten thousand Pounds was granted for a similar Purpose, to be issued and appropriated in a similar Manner: And whereas these Three several Sums of Ten thousand Pounds being no longer required for the Purposes for which they were granted; be it enacted, That so much of the said Acts, as authorizes the Issue of the said several Sums of Ten thousand Pounds, shall be and the same are hereby repealed.

## 6° GEORGII IV. REGIS.

## CAP. CXX.

[See § 54 as to  
judicial Procedure  
in Court of Teinds;  
Declarator, Reduc-  
tion, etc.]

*An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland.*—[5th July 1825.]

[This Act is printed in Book II., COURT OF SESSION.]

## 4° &amp; 5° GULIELMI IV. REGIS.

## CAP. XLI.

*An Act to regulate the Appointment of Ministers to Churches in Scotland erected by voluntary Contribution.*—[30th July 1834.]

WHEREAS in many Parishes in *Scotland* the Means of public Worship provided by the Established Church of *Scotland* are inadequate to the Extent of the Population; and it is expedient to encourage the Erection of additional Places of Worship by voluntary Contribution: Be it therefore enacted by the King's most Excellent Majesty, by and

with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Church, Chapel, or other Place of Worship in *Scotland*, built or acquired and endowed by voluntary Contribution, shall, according to the Provisions of the existing Law, be erected into a parochial Church, either as an additional Church within a Parish already provided with a parochial Church, or as the Church of a separate Parish to be erected out of a Part or Parts of any existing Parish or Parishes, whether the same be established and erected merely quoad spiritualia by the Authority of the Church Courts of the Established Church of *Scotland*, or also quoad temporalia by Authority of the Lords of Council and Session, as Commissioners of Teinds, neither the King's Majesty, nor any private Person, nor any Body Politic or Corporate, having Right to the Patronage of the Parish or Parishes within which such additional Churches shall be established, or out of which such new Parishes shall be erected, shall have any Claim, Right, or Title whatsoever to the Patronage of such newly-established Churches or newly-erected Parishes; but the Appointment of Ministers thereto shall be made according to the Manner and subject to the Conditions which shall be or have been prescribed by the said Church Courts, subject always to such Alterations as shall be made by them according to the Laws of the Church from Time to Time: Provided always, that nothing in this Act contained shall extend or be construed to extend to depriving his Majesty, or others, Patrons of Parishes in *Scotland*, of their Right to present Ministers to the existing parochial Churches thereof: Provided always, that neither any Part of the Stipends of Ministers appointed for the Service of any such additional Churches to be erected by voluntary Contribution as aforesaid, nor any Charge for the Support or Repairs of any such Church, School House, or other Building appertaining to the same, nor for the Erection or Support or Repairs of any Manse or Building for the Residence of such Ministers, nor for the Provision of any Glebe for any of such Ministers aforesaid, nor for the Support of any Schoolmaster, shall be imposed on or become chargeable on the Teinds or to the Heritors of any Parish or Magistrates of Towns in which any such Church as aforesaid shall be erected or endowed by voluntary Contribution as aforesaid: Provided also, that nothing herein contained shall be construed to limit or affect the Powers of the Commissioners of Teinds exercised under and according to the Provisions of the Act of the *Scottish* Parliament, Sixth of Queen Anne, C. 9, intituled, *An Act anent the Plantation of Kirks and Valuation of Teinds*.

*Appointment of Ministers.*

Ministers to Places of Worship in *Scotland* built by voluntary Contribution, and erected into parochial Churches, to be appointed according to the Mode prescribed by the Church Courts.

Saving the Rights of Patrons.

Proviso for Parishes in which are Churches erected by voluntary Contribution.

Act not to affect Powers of Commissioners of Teinds under 6 Anne, c. 9 (S.)

*Sittings in Chapels.*

One Fifth of  
Sittings to be at  
Rents fixed by  
Church Courts.

Act not to extend  
to Churches built  
in any Parish by  
the Patron.

10 Anne, c. 12.

Providing for  
Churches built by  
Patron and  
Heritors only.

II. Provided always, and be it enacted, That in every Church or Chapel which may be erected under the Authority of this Act not less than One Fifth Part of the Sittings therein shall be at Rents to be fixed by the said Church Courts.

III. Provided always, and be it further enacted, That this Act shall not extend to any Church or Chapel built and endowed in any Parish by the Patron thereof, who shall retain every Right to which he would have been legally entitled had this Act never been passed into Law.

IV. And be it enacted, That if in any Parish a Church or Chapel shall be built and endowed at the joint Expense of the Patron thereof and of One or more Heritors therein, and of no other Persons, the legal Rights of the Patron shall take full Effect as aforesaid, unless an Objection shall be transmitted in Writing to the Moderator of the Presbytery of the Bounds, and signed by such a Number of the Heritors as shall have contributed One Fourth Part of the whole Sum laid out or to be expended in the said Building and Endowment, in which Case the said Church or Chapel shall fall within the Provisions of this Act.

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1° & 2° VICTORIÆ REGINÆ.

CAP. CXVIII.

[As to Appointment of Second Lord Ordinary to be Lord Ordinary on Teinds.]

*An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in Scotland, and to reduce the Fees payable in these Courts.*—[16th August 1838.]

[This Act is printed in Book II., COURT OF SESSION.]

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2° & 3° VICTORIÆ REGINÆ.

CAP. XXXVI.

[As to Quorum of Court.]

*An Act to regulate the Duties to be performed by the Judges in the Supreme Courts of Scotland, and to increase the Salaries of certain of the said Judges.*—[29th July 1839.]

[This Act is printed in Book II., COURT OF SESSION.]



## 7° &amp; 8° VICTORIÆ REGINÆ.

## CAP. XLIV.

*An Act to facilitate the disjoining or dividing of extensive or populous Parishes, and the erecting of new Parishes, in that Part of the United Kingdom called Scotland.—[19th July 1844.]*

WHEREAS by certain Acts of the Parliament of Scotland Provision is made for disjoining large Parishes and building and erecting new Churches ; and in particular by an Act passed in the Parliament of Scotland in the Year One thousand seven hundred and seven, intituled, *Act anent Plantation of Kirks and Valuation of Teinds*, the Lords of Council and Session are empowered, authorized, and appointed to judge, cognosce, and determine in all Affairs and Causes whatsoever which by the Laws and Acts of Parliament of the Kingdom of Scotland were formerly referred to and did pertain and belong to the Jurisdiction and Cognizance of the Commissioners formerly appointed for the Plantation of Kirks and Valuation of Teinds, as fully and freely in all respects as the said Lords do or may do in other Civil Causes ; and particularly, inter alia, “to disjoin too large Paroches, to erect and build new Churches, to annex and dismember Churches, as they shall think fit, conform to the Rules laid down and Powers granted by the Nineteenth Act of the Parliament One thousand six hundred and thirty-three, the Twenty-third and Thirtieth Acts of the Parliament One thousand six hundred and ninety, and the Twenty-fourth Act of the Parliament One thousand six hundred and ninety-three, in so far as the same stand unrepealed ; the transporting of Kirks, disjoining of too large Paroches, or erecting and building of new Kirks, being always with the Consent of the Heritors of Three Parts of Four at least of the Valuation of the Paroch whereof the Kirk is craved to be transported, or the Paroch to be disjoined and new Kirks to be erected and built :” And whereas it is expedient to afford Facilities and to make further Provision for the disjoining or dividing of extensive or populous Parishes : Be it enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act so much of the said recited Act as requires the Consent of the Heritors of Three Parts of Four at least of the Valuation of the

1707, c. 9.

So much of recited Act as requires the Consent of Three

*Competency of  
Disjunction.*

Parts of the  
Heritors repealed.

Consent of  
Majority of  
Heritors to be  
sufficient.

Largeness of the  
Population to be a  
Reason for Divi-  
sion of Parish.

Non-consent of  
Heritors not to be  
deemed valid Ob-  
jection to Process  
for disjoining  
Parishes.

Where Proof is  
given that a suffi-  
cient Church Ac-  
commodation ex-  
ists in the new  
Parish, Lords of  
Council may allow  
Process to proceed.

Parish whereof the Kirk is craved to be transported, or the Parish to be disjoined and new Kirks to be erected and built, shall be repealed; and that the Consent of the Heritors of a major Part of the Valuation of any Parish shall be necessary and sufficient in all Cases in which the Consent of the Heritors of Three Parts of Four of the Valuation of such Parish was required by the said recited Act, except where otherwise hereinafter expressly provided.

II. And be it enacted and declared, That a Parish may be deemed and held to be too large, and may, as such, be disjoined or divided under the Provisions of the said recited Act as altered and amended by this Act, by reason of the Largeness of the Population of such Parish, although the superficial Measurement thereof may not be too large for One Parish.

III. And be it enacted, That it shall not be a valid Objection to the Competency of any Process which shall be brought for disjoining or dividing a Parish or Parishes and erecting a new Kirk or Kirks, under the Provisions of the said recited Act as altered and amended by this Act, that the Consent of the Heritors of a major Part of the Valuation of the Parish to be disjoined or divided had not been given previous to such Process having been brought into Court; and it shall be lawful for the Lords of Council and Session before whom any such Process shall have been brought to appoint special Intimation thereof to be made, in such Form and Manner as the said Lords of Council and Session shall direct, to such of the Heritors of the Valuation of the Parish as shall not have already either given their Consent or judicially stated their Dissent, and to sist Proceedings in such Process for a definite Time, for the Purpose of allowing such Heritors to state judicially their Consent or their Dissent; and such of them as shall not within a Time to be fixed by the said Lords of Council and Session, and to be specified in such Intimation as aforesaid, judicially state their Dissent, shall, in computing the statutory Proportion of Consents, be reckoned as consenting Heritors.

IV. And be it enacted, That if, in any Process for disjoining or dividing a Parish, it shall be shown to the Satisfaction of the Lords of Council and Session that there is already built or erected and in good Repair a Church or Place of Worship suitable for the Church of the new Parish proposed to be erected, and capable of being lawfully appropriated to that Purpose, whereby the Expense of erecting a new or additional Church will not be incurred by the Heritors, and that the Titulars or others having Right to the Teinds out of which is to be paid not less than Three Fourths of the additional Stipend or Stipends to be modified by

reason of such Disjunction or Division have consented thereto, or have stated no Objection thereto, after due Intimation by Direction of the Lords of Council and Session to them given, it shall be lawful and competent for the said Lords of Council and Session to allow such Process to proceed, and to give Judgment and Decree therein, if, upon Consideration of the whole Case, it shall appear to them that there are good and sufficient Reasons for so doing, although the Heritors of a major Part of the Valuation of the Parish to be disjoined or divided may not have consented.

V. And be it enacted, That when any Parish or Parishes shall have been disjoined or divided, and a new Parish erected, under the Provisions of the said recited Act as altered and amended by this Act, the Patronage of such new Parish shall belong to the Patron of the original Parish from which the same has been disjoined or divided; or if the new Parish has been disjoined or divided from more than One Parish having different Patrons, the Patronage of such new Parish shall belong to the Patrons of the Parishes from which the same has been disjoined or divided, and shall be exercised by them, either jointly or in a certain Order of Rotation as may have been agreed upon by them, or failing of such Agreement, then their respective Interests in the Right of Patronage, and the Manner of exercising the same, shall be fixed by the Lords of Council and Session, and in either Case shall be set forth in a Judgment to be pronounced by the said Lords of Council and Session in the Process for erecting such new Parish: Provided always, that such Patron or Patrons of the original Parish or Parishes from which the new Parish has been disjoined or divided shall undertake to bear the Burden of not less than One Half of the Stipend to be provided to the Minister of such new Parish: Provided also, that no Patron of any of the original Parishes, who shall not bear the Burden of One Fourth Part of the Stipend of the Minister of the new Parish, shall have any Right or Interest in the Patronage of such new Parish by virtue of his Right of Patronage in such original Parish; and in every Case in which the Patron or Patrons of the original Parish or Parishes shall not bear the Burden of not less than One Half of the Stipend to be provided to the Minister of the new Parish, the Patronage of such new Parish, and the Right of Presentation to the Kirk thereof, shall belong to the Person if there be only One such Person, or to the Persons alternately if there are more than One and not more than Three such Persons, who shall bear the Burden of the whole Stipend provided for the Minister of such new

*Patronage.*

Patronage in new Parishes.

See 10 Anne, c. 12;  
4 & 5 W. 4, c. 41.

*Poor Law and  
Roads.*

Parish at the Erection thereof, and to the Heirs of such Person or Persons; and if the Persons who bear the Burden of such Stipend shall exceed Three in Number, then the Patronage of such new Parish, and the Right of Presentation to the Kirk thereof, shall be vested in and be exercised by Three Trustees, or, in case of Difference of Opinion, by the Majority of Three Trustees, who shall be chosen for their respective Lives in Manner following; (that is to say,) the Three Trustees first chosen shall be elected by a Majority of Votes at a Meeting of the Heritors of such new Parish, and of the Persons who are liable in Payment of Stipend to the Minister thereof, or who have contributed the Sum of Five Pounds towards the Fund out of which any Part of the Stipend is provided, or towards the Expense of providing the Church for such new Parish; and upon the Death, Disability, or Resignation of any of the Trustees so chosen, another Trustee in his Place shall be elected for Life by the Heritors and Kirk Session of the Parish; and as often as any Vacancy shall happen by the Death, Disability, or Resignation of any Trustee, his Place shall be supplied in like Manner by another Trustee, to be elected for Life by the Heritors and Kirk Session of the Parish: Provided always, that no Person shall be qualified to hold the Office of Trustee who is not a Member of the Church of *Scotland* in full Communion therewith.

In certain Cases a Parish, though divided, may remain as One Parish for Purposes of Poor.

VI. And whereas in some large and populous Parishes which it may be considered necessary or proper to divide into Two or more Parishes there are a Number of poor Persons, the greater Portion of whom reside in or near the same Locality, such Locality being sometimes the least wealthy, whereby the particular territorial Division of such large and populous Parish, which would be most expedient and advantageous in other respects, would operate injuriously or unjustly if each of the new Parishes into which it may be divided was left to provide from its own Resources for that Portion of the Poor of the original Parish resident within the Territory of such new Parish; be it enacted, That it shall be lawful for the said Lords of Council and Session, if they see Cause so to do in any Judgment to be by them pronounced dividing or disjoining a Parish, to declare and provide, that, notwithstanding such Division or Disjunction, the original Parish and the several new or separate Parishes thereby erected within the Bounds thereof shall, in so far as regards the Support and Management of the Poor, and all Matters and Questions connected therewith, remain and be regarded as One Parish; and in every such Case there shall be One Kirk Session, consisting of the Members of the Kirk Sessions of all the Parishes within the Bounds of the ori-

ginal Parish, in all Matters and Questions relating to the Support and Management of the Poor; and the Session Clerk of the original Parish shall, during his Incumbency, act as Clerk of the said Kirk Session in all such Matters and Questions.

*Quoad Sacra  
Parishes.*

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VII. And be it enacted, That no Division of any Parish shall affect the Law and Practice already existing in such Parish as to the Management of Roads, or as to the levying or applying the Statute Labour or Conversion of Statute Labour within the Bounds of the original Parish so divided, but the same shall continue to be managed, levied, and applied as if no such Division had taken place, unless it shall be considered expedient by the County or District Trustees for the Conversion of the Statute Labour to make a new Arrangement for allocating the Management of the Roads and Statute Labour, or Conversion Money, in reference to the Alteration of Circumstances consequent on such Division of the Parish as aforesaid.

Division of a  
Parish not to  
affect Law as to  
Roads.

VIII. And be it enacted, That if any Person or Persons shall, at his, her, or their Expense, have built or shall have acquired, or shall have undertaken to build or acquire, a Church, and shall have endowed or shall have undertaken to endow the same, it shall be competent for the Lords of Council and Session, acting in their Capacity aforesaid of Commissioners for the Plantation of Kirks and Valuation of Teinds, and they are hereby empowered and authorized, on the Application of such Person, or of such Persons where they do not exceed Five in Number, or of Two Thirds or any Ten of such Persons where they do exceed Five in Number, and without any Concurrence of Heritors, to inquire into the Circumstances, and to erect such Church into a Parish Church in connexion with the Church of *Scotland*, and to mark out and designate a District to be attached thereto quoad sacra, and to disjoin such District quoad sacra from the Parish or Parishes to which the same, or any Part thereof, may have belonged or been attached, and to erect such District into a Parish quoad sacra in connexion with the Church of *Scotland*; and it shall and may be lawful for the Minister and Elders of such Parish to have and enjoy the Status and all the Powers, Rights, and Privileges of a Parish Minister and Elders of the Church of *Scotland*: Provided always, that nothing herein contained shall be construed so as to deprive any Party who has a legal Interest in the Fabric of any Place of Worship of any Right which by Law belongs to such Party to prevent such Place of Worship from being used or appropriated for a Place of Worship in connexion with the Church of *Scotland*: Provided also, that due Intimation of every such Application

Where a Church is  
built and endowed,  
a District may be  
attached thereto.

Endowments.Endowment of  
Minister.

as aforesaid shall be made to all Parties having Interest, that they may have an Opportunity of appearing and being heard; which Intimation may be made by Notice in the *Edinburgh Gazette*, or by Advertisement in One or more *Edinburgh* Newspapers of general Circulation, or in any other Form or Manner that may be directed by the Lords of Council and Session in any Act or Acts of Sederunt, or any Order to be made by them for that Purpose: And provided also, that the Titles to the said Church shall be taken and conceived so as that the said Church shall be inalienably secured as the Church of the said new Parish in connexion with the Church of *Scotland*, and that due Provision shall be made for the future Maintenance of the Fabric of the said Church; and that the Endowment for the Minister of the said new Parish shall be not less than a Stipend of One hundred Pounds per annum, or Seven Chalders of Oatmeal, to be calculated at the highest Fiars of the County, exclusive of the Sum necessary for Communion Elements, with a suitable Dwelling House or Manse and Offices and Appurtenances, or a Stipend of not less than One hundred and twenty Pounds, or Eight and a Quarter Chalders of Oatmeal, to be calculated at the highest Fiars of the County per annum, where there shall be no such Dwelling House or Manse; and that such Stipend of not less than One hundred Pounds, or not less than One hundred and twenty Pounds, shall be permanently provided and secured in all Time coming for the Minister of the said Parish; and that if there shall be a Dwelling House or Manse, the Title to such Dwelling House or Manse and Offices and Appurtenances shall be taken and conceived so that such Dwelling House or Manse and Offices and Appurtenances shall be inalienably secured as the Dwelling House or Manse and Offices and Appurtenances for the Minister of the said Parish; and that due Provision shall be made for the future Maintenance of the Fabric of such Dwelling House or Manse and Offices and Appurtenances, all to the Satisfaction of the said Lords of Council and Session; and the Right of Presbyteries to present to vacant Parishes jure devoluto, according to the Law of *Scotland*, shall have place in regard to all Parishes erected quoad sacra as aforesaid, in the same Manner as in regard to other Parishes.

Sittings.

4 & 5 W. 4, c. 41,  
§ 2.

IX. And be it enacted, That in every such Church as aforesaid a Portion of the Sittings therein, to be determined by the Sheriff of the County in which such Church is situated, and not exceeding One Tenth of the whole Sittings, shall be set apart as free Seats for all Persons frequenting the same; and another Portion of the Sittings

therein, not exceeding One Fifth of the whole Sittings, shall be let at Rents not exceeding a Rate to be fixed by the Presbytery of the Bounds; and the remaining Portion of the Sittings may be let in such Manner as shall be agreed upon by the Minister for the Time being, and the Person or Persons liable for the Repair of the Church and for the Stipend of the Minister, or in case of not agreeing, then in such Manner as shall be determined by the Sheriff of the County as aforesaid: Provided always, that One Pew shall be appropriated, Rent-free, for the Accommodation of the Family of the Minister, and another Pew for the officiating Elders; and the Pew or Seat Rents of any such Church as aforesaid may be expended and applied for the purpose of defraying the necessary Expenses of a Precentor, a Beadle or Kirk Officer, and other Expenses necessarily incurred in dispensing the Ordinances of Religion therein, and not otherwise provided for, and for the purpose of upholding in due Repair and improving the Fabric of such Church, or of the Dwelling House and Offices of the Minister, or for the Relief of any Person or Persons who may have undertaken or become liable to uphold the same, or who may be liable for the Endowment or Stipend provided and secured for the Minister of such Church; and it shall be lawful to make Collections at the Door of any such Church for any of the Purposes aforesaid: Provided also, that the Sum received by any Person liable to uphold the Church or Dwelling House, or liable for the Endowment or Stipend as aforesaid, shall not in any Year exceed the Sum paid or expended by such Person in the same Year by reason of such Liability.

Sites for Churches.

X. And be it enacted, That it shall and may be lawful for any Heritor or for any Heir of Entail in *Scotland*, Trustee, Tutor, and Curator of Minors, and every Person lawfully empowered to act for Persons under any legal Disability or Incapacity, to give and grant heritably and irredeemably such Land or Heritage belonging to them or under their Management as may be necessary for the Site of such Church, Dwelling House, and Offices as aforesaid, and also a Portion or Portions of Land near the same for a Churchyard or for a Glebe, and not exceeding in the whole Four Acres; which Portion or Portions of Land shall, at the Sight of the Sheriff of the County wherein the same is situated, or of some Person appointed by the Sheriff for that Purpose, be marked out and set apart as the Churchyard and as the Glebe to belong to such new Parish in all Time coming, and, having been so given, granted, marked out, and set apart, shall not be liable to or affected by any other Rights, Titles, Trusts, Interests, or Incumbrances to, in, or

Sites for Churches  
may be granted.

*Private  
Endowments.*

upon the same whatsoever ; and such Heir of Entail shall not thereby be subject to nor incur any Forfeiture or Irritancy under any Deed of Entail by virtue of which he or she may hold the said Land or Heritage ; and such Trustee, Tutor, or Curator, or other Person as aforesaid, shall be indemnified for what he may do in the Premises : Provided always, that the Power hereby given to any Heir of Entail, Trustee, Tutor, and Curator of Minors, and every Person lawfully empowered to act for Persons under legal Disability or Incapacity, shall not in any Case extend to or be understood to comprehend a Power of giving and granting any Lands or Heritages within Half a Mile of the Manor Place in the natural Possession of the Proprietor, or of giving and granting any or any Part of any Gardens, Orchards, or Inclosures adjacent to the Manor Place which have usually been in the natural Possession of the Proprietor, or have not been usually let for a longer Term than Seven Years, when the Heir in Possession was of lawful Age, and not under any legal Disability or Incapacity : Provided also, that no such Grant as aforesaid by any Heir of Entail in Possession, or by any Trustee, Tutor, Curator, or other Person lawfully empowered to act as aforesaid for any such Heir of Entail, shall be effectual, unless the Heir of Entail nearest in succession, of lawful Age, and not under any legal Disability or Incapacity, shall have consented to such Grant, which Consent may be given by Letter or other Writing under the Hand of such Heir of Entail nearest in succession, and shall be proved to the Satisfaction of the said Sheriff of the County : Provided also, that no Trustee, Tutor, or Curator of Minors, or Person lawfully empowered to act for Persons under legal Disability or Incapacity, shall make any such Grant as aforesaid without adequate Consideration for the same either in Price or Feu Duty, the Adequacy of which Consideration shall be proved to the Satisfaction of the said Sheriff of the County before the Portion or Portions of Land shall be marked out or set apart as aforesaid.

Lands may be  
burdened for  
Endowments.

XI. And be it enacted, That it shall and may be lawful for any Heir of Entail in *Scotland* to burden the Lands and Estate of which he or she is in Possession as Heir of Entail aforesaid, lying within any District to be marked out and designated as aforesaid, or to give Security over the same for the annual Payment out of the clear yearly Rents and Profits of the said Lands and Estate of any Sum not exceeding Three Pounds per centum of such clear yearly Rents and Profits, after deducting all prior Burdens and Provisions, as the same shall be ascertained by an Average of the Five Years immediately preceding such Burden or



Security, and in no Case exceeding the yearly Sum of One hundred and twenty Pounds, for the purpose of endowing or contributing to the Endowment of such new Parish as aforesaid; and also to burden such Lands and Estate or give Security over the same for upholding in due Repair the Fabric of the Church of such new Parish, and the Dwelling House and Offices of the Minister, or any of them; the Sums to be expended in such Repairs not exceeding in any One Year One Pound per centum on the Amount of Money originally expended in building or purchasing and completing such Church, or upon the estimated Value thereof, when received and recognised as the Church of such new Parish, and One Pound per centum on the Amount of Money originally expended in building or purchasing and completing such Dwelling House and Offices, or upon the estimated Value thereof; and such Heir of Entail shall not, by reason of such acting as aforesaid, be subject to nor incur any Forfeiture or Irritancy under any Deed of Entail by virtue of which he or she may hold such Lands or Estate, and such Burdens and Securities shall be as valid and effectual against such Lands and Estates as if the same had not been entailed: Provided always, that no such Burden or Security as aforesaid shall be effectual unless the Heir of Entail nearest in succession, of lawful Age, and not under legal Disability or Incapacity, shall have consented thereto, which Consent may be given judicially, or by Letter or other Writing under the Hand of such Heir of Entail nearest in succession: Provided also, that if such Heir of Entail nearest in succession as aforesaid shall be an Heir of the Body of the Heir of Entail in Possession who intends to create such Burden or Security, then such Heir of Entail in Possession shall, Three Months at least before creating the same, give Notice of such his Intention, in Writing, to the Heir of Entail next entitled to succeed to the said Estate, after the Heirs of his own Body, if within *Great Britain* or *Ireland*, and, if the Heir next entitled to succeed is not within *Great Britain* or *Ireland*, to his nearest male Relation by the Father, of lawful Age, or to his known Factor or Attorney; and before any such Burden or Security as aforesaid shall be created, Evidence shall be produced, to the Satisfaction of the said Lords of Council and Session, that such Consent as aforesaid, and such Notice as aforesaid, where required, have been given, and that the Means of public Worship for the Inhabitants of such District are wanting, and cannot be adequately provided unless the Power hereby given of burdening the entailed Estate shall be exercised to the Extent proposed.

XII. And whereas in some populous Parishes and Dis-

*Highland Parishes.*

For administering  
religious Service  
in the Gaelic  
Language.

A separate Parish  
may be formed for  
that Purpose.

For forming cer-  
tain Highland  
Churches into  
Parishes.

4 G. 4, c. 79.

5 G. 4, c. 90.

tricts in the Low Country of *Scotland*, particularly in large Towns and in the Neighbourhood of Cities and Royal Burghs, there are a great Number of Persons, Natives of the Highlands and Islands of *Scotland*, who do not understand the *English* Language so as to be capable of receiving the full Benefit of religious Instruction in *English*, or of having the Ordinances of Religion administered to them with Advantage in that Tongue: And whereas it is expedient that some Provision should be made for enabling such Persons to obtain religious Instruction, and to have the Ordinances of Religion administered to them, in the *Gaelic* Language; be it enacted, That in disjoining or dividing any large or populous Parish or Parishes in which there are a great Number of such Persons, it shall and may be lawful to make Provision for the spiritual Wants of such Persons by appointing religious Instruction to be communicated to them, and the Ordinances of Religion to be dispensed among them, in the *Gaelic* Language.

XIII. And be it enacted, That where a separate Church shall have been erected for any such *Gaelic* Congregation, and a permanent Endowment shall have been secured for the same, either from Teinds or otherwise, to the Satisfaction of the said Lords of Council and Session, it shall and may be lawful to erect such Church and the Congregation thereof into a separate Parish, although the Members of such Congregation may be scattered, and no territorial District may be assigned to such Parish exclusively; and it shall and may be lawful for the Minister or Ministers and Elders of such Parish to have and enjoy the Status and all the Powers, Rights, and Privileges of a Parish Minister or Parish Ministers and Elders of the Church of *Scotland*: Provided always, that nothing herein contained shall be construed as giving to the Minister or Ministers and Elders of any such *Gaelic* Congregation Right to exercise pastoral Superintendence and Discipline over Persons who are not either Members of such *Gaelic* Congregation, or of the Families of such Members, or resident within the territorial District, if any, which may be assigned to such Parish exclusively.

XIV. And whereas an Act was passed in the Fourth Year of the Reign of his late Majesty King *George* the Fourth, intituled, *An Act for building additional Places of Worship in the Highlands and Islands of Scotland*; and another Act was passed in the Fifth Year of the Reign of his said late Majesty King *George* the Fourth, intituled, *An Act to amend an Act for building additional Places of Worship in the Highlands and Islands of Scotland*: And whereas, under the Authority and Provisions of the said

Highland Parishes.

Two last mentioned Acts, several additional Places of Worship have been built or provided, and certain Districts have been defined or set apart for the Benefit of which the said Places of Worship were built or provided, and Ministers have been appointed to officiate at such Places of Worship and in such Districts, and Dwelling Houses and Appurtenances have been built or provided for the Ministers so officiating; and Provision has been made for the Payment to such Ministers of Stipends not exceeding the Sum of One hundred and twenty Pounds per annum in any One Case; and Provision is made by the said last mentioned Act for upholding in repair such Places of Worship and Dwelling Houses and Appurtenances; be it enacted, That upon Application by the Presbytery within which any such Place of Worship is situated, or by One or more Heritors holding together One Fourth Part of the Valuation of the District defined and set apart as the District for the Benefit of which such Place of Worship has been provided, or of her Majesty's Advocate for *Scotland*, it shall and may be lawful for the said Lords of Council and Session, acting as aforesaid, to disjoin such District from the Parish or Parishes to which the same or any Part thereof may have belonged or been attached, and to erect the same into a Parish quoad sacra; and in every such Case the Place of Worship built or provided as aforesaid may be held and appointed to be the Church of such Parish, and the Dwelling House and Appurtenances provided for the Minister may be held and appointed to be the Dwelling House of the Minister of such Parish; and the Provisions contained in the said Two last mentioned Acts may be held and taken to be sufficient Provisions for upholding in Repair such Church and Dwelling House and Appurtenances, and a Stipend of One hundred and twenty Pounds, payable under the Provisions of the said Acts, may be held to be sufficient Stipend for the Minister of the said Parish; and it shall and may be lawful for the Minister and Elders of such Parish to have and enjoy the Status and all the Powers, Rights, and Privileges of a Parish Minister and Elders of the Church of *Scotland*.

XV. And be it enacted, That if in any Case in which a Place of Worship has been built, and a District has been defined and set apart, under the Provisions of the said Two last recited Acts, Application shall be made to the said Court to erect such District alone, or such District with Additions thereto, into a new Parish quoad omnia, with the requisite Consent of Heritors, and that the said Court shall give effect to such Application, it shall and may be competent for the said Court to declare and appoint the Place of Worship already erected in such District to be the Church

Charge of Church,  
etc., thenceforth  
to lie on Parties  
liable thereto by  
Law of *Scotland*.

Liability for  
Repairs, etc.

of such new Parish, and to appoint and declare the Dwelling House already erected for the Minister to be the Manse of such new Parish; and the Commissioners under the said last recited Acts shall thereupon cease to hold such Place of Worship and such Dwelling House for the Purposes of the said last recited Acts; and the Provisions contained in the said last recited Acts for upholding such Place of Worship and such Dwelling House in Repair shall cease and determine, and the Burden of upholding the same shall fall on the Parties who by the Law of Scotland would be bound to uphold the Church and Manse of the Parish, if such Church and Manse had been appointed to be built for the newly-erected Parish; and in fixing the Stipend to be paid to the Minister of such newly-erected Parish, the said Court shall compute as Stipends the Sum paid by Authority of the said last recited Acts to the Minister in such District, which Sum shall be continued to be paid to the Minister of such newly-erected Parish: Provided always, that the Right of her Majesty, her Heirs and Successors, to nominate and appoint the Minister to such Church and District shall remain entire, notwithstanding the Erection thereof into a separate Parish.

Provisions of  
50 G. 3, c. 84, and  
5 G. 4, c. 72, not to  
extend to Parishes  
erected under the  
present Act.

XVI. And be it enacted, That the Provisions of the Act passed in the Fiftieth Year of the Reign of his Majesty King George the Third, intituled, *An Act for augmenting parochial Stipends in certain Cases in Scotland*, and the Provisions of the Act passed in the Fifth Year of the Reign of his Majesty King George the Fourth, intituled, *An Act for amending and rendering more effectual an Act for augmenting parochial Stipends in certain Cases in Scotland*, shall not be extended to any new Parishes erected under the Provisions of this Act, although the Stipend or Endowment modified or provided for the Minister of any such new Parish should be less than One hundred and fifty Pounds Sterling.

Act may be  
amended this  
Session.

XVII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

**BOOK IV.**

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**THE LAW OF EVIDENCE**

**AS ADMINISTERED IN**

**SCOTLAND.**





# THE PUBLIC GENERAL STATUTES

RELATING TO

## THE LAW OF EVIDENCE

AS ADMINISTERED IN

### SCOTLAND.

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 Abbreviations used in the Marginal Column.—

*Am.* = amends; *Am. by* = amended by;

*Ext.* = extends; *Ext. by* = extended by;

*Rep.* = repeals; *Rep. by* = repealed by.

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41° GEORGII III. REGIS.

CAP. XC.

*An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same.*—[2d July 1801.]

§ IX. And for the better and more effectual Proof of the Statute Law of the Kingdoms of Great Britain and Ireland, and of England and Ireland, previous to the Union of the said Kingdoms, in all Courts of Civil and Criminal Jurisdiction in every Part of the said United Kingdom, be it enacted, That the Copy of the Statutes of the Kingdom of England and of the Kingdom of Great Britain since the Union with Scotland, printed and published by the Printer duly authorized to print and publish the same by his Majesty or by any of his Royal predecessors, shall be received as conclusive Evidence of the several Statutes made and enacted prior to the Union of the Kingdoms of Great Britain and Ireland by the Parliaments of England and Great Britain respectively, in all Suits, Actions, or Prosecutions respectively commenced, instituted, or carried on, or to be commenced, instituted,

The Statutes of England and of Great Britain, printed and published by the King's Printer, shall be received as conclusive Evidence in any Court in Ireland, and the Statutes of Ireland prior to the Union, so printed and published, shall, in

*Proof of  
Statute Law.*

like Manner, be  
Evidence in any  
Court in Great  
Britain.

or carried on in any Court of Civil or Criminal Jurisdiction in the Part of the United Kingdom called *Ireland*, and in like Manner a Copy of the Statutes of the Kingdom of *Ireland* made and enacted by the Parliament of the same prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, and printed and published by the Printer duly authorized by his Majesty or any of his Royal Predecessors to print and publish the same, shall be received as conclusive Evidence of the several Statutes made and enacted by the Parliament of *Ireland* prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, in all Suits, Actions, or Prosecutions respectively commenced, instituted or carried on, or to be commenced, instituted, or carried on in any Court of Civil or Criminal Jurisdiction in that Part of the United Kingdom called *Great Britain*.

## 41° GEORGII III. REGIS.

## CAP. CV.

[Estate Bills Act,  
1801.]

*An Act to authorize the Judges to whom Petitions for certain Bills shall be referred, to examine Witnesses upon Oath.*  
[2d July 1801.]

## Preamble.

Judges of Scotland  
or Ireland to  
whom Bills re-  
specting Lands  
may be referred  
by the House of  
Lords, may ex-  
amine Witnesses on  
Oath, as if sworn  
at the Bar of that  
House.

WHEREAS it is expedient that the Judges to whom any Petition for any Bill concerning Lands or Hereditaments in that Part of the United Kingdom called *Ireland*, or concerning Lands, Hereditaments, or other heritable Subjects in that Part of the United Kingdom called *Scotland*, shall be referred by the Lords Spiritual and Temporal, in Parliament assembled, should be authorized to administer an Oath to all such Witnesses as may be examined before them, touching the Matter of such Petition may it therefore please your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for any One or more of the said Judges of the Part of the United Kingdom called *Scotland*, to whom a Petition for any Bill concerning Lands, Hereditaments, or other heritable Subjects in that Part of the United Kingdom called *Scotland*, shall be referred by the Lords Spiritual and Temporal, in Parliament assembled, and for any One or more of the Judges of that Part of the United Kingdom called *Ireland*, to whom any such Petition concerning Lands or other Hereditaments in that Part of the United Kingdom called *Ireland*, shall be referred as aforesaid, to examine upon Oath all such Witnesses as shall be produced before them, touching the Matter of such



Petition and Reference, and for that Purpose to administer an Oath accordingly; and every Oath which shall be so taken shall be as available and effectual to all Intents and Purposes, and every Person who shall take such Oath shall be punishable for any false Evidence he shall give under such Oath, in the same Manner as if the said Oath had been administered to the Witness taking the same at the Bar of the House of Lords.

*Recusant Witness.*

46° GEORGH III. REGIS.

CAP. XXXVII.

*In Act to declare the Law with respect to Witnesses refusing to answer.—[5th May 1806.]*

**W**HEREAS Doubts have arisen whether a Witness can by Law refuse to answer a Question relevant to the Matter in Issue, the answering of which has no Tendency to accuse himself or to expose him to any Penalty or Forfeiture, but the answering of which may establish or tend to establish that he owes a Debt or is otherwise subject to a Civil Suit at the Instance of his Majesty or of some other Person or Persons; be it therefore declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That a Witness cannot by Law refuse to answer a Question relevant to the Matter in Issue, the answering of which has no Tendency to accuse himself or to expose him to Penalty or Forfeiture of any Nature whatsoever, by reason only or on the sole Ground that the answering of such Question may establish or tend to establish that he owes a Debt, or is otherwise subject to a Civil Suit, either at the Instance of his Majesty or of any other Person or Persons.

*Preamble.*

*Witness cannot by Law refuse to answer on the Ground of subjecting himself to a Suit for Debt.*

*Affirmation.  
Interest.*

9° GEORGII IV. REGIS.

CAP. XXXII.

[See 8 & 4 W. 4,  
c. 49.]

*An Act for amending the Law of Evidence in certain Cases*  
—[27th June 1828.]

Quakers or Moravians required to give Evidence may, instead of an Oath, make their solemn Affirmation, which shall be of the same Effect in all Cases, Civil or Criminal.

*Ext. by 1 & 2 V.,  
c. 77; 18 V., c. 25.*

The Party whose name is forged shall be a competent Witness in Prosecutions for Forgery.

*Ext. by 15 V.,  
c. 27, § 1; 16 V.,  
c. 20, § 1, 8.*

WHEREAS it is expedient that Quakers and Moravians should be allowed to give Evidence upon their solemn Affirmation in all Cases, Criminal as well as Civil; and that, in Prosecutions for Forgery, the Party interested should be rendered a competent Witness: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Quaker or Moravian who shall be required to give Evidence in any Case whatsoever, Criminal or Civil, shall, instead of taking an Oath in the usual Form, be permitted to make his or her solemn Affirmation or Declaration in the Words following; that is to say, "I A. B. do solemnly, sincerely, and truly declare and affirm;" which said Affirmation or Declaration shall be of the same Force and Effect in all Courts of Justice, and other Places where by Law an Oath is required, as if such Quaker or Moravian had taken an Oath in the usual Form; and if any Person making such Affirmation or Declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any Matter or Thing, which if the same had been sworn in the usual Form would have amounted to wilful and corrupt Perjury, every such Offender shall be subject to the same Pains, Penalties, and Forfeitures to which Persons convicted of wilful and corrupt Perjury are or shall be subject.

II. And be it enacted, That on any Prosecution by Indictment or Information, either at Common Law, or by virtue of any Statute, against any Person, for forging any Deed, Writing, Instrument, or other Matter whatsoever; or for uttering or disposing of any Deed, Writing, Instrument, or other Matter whatsoever, knowing the same to be forged; or for being accessory before or after the Fact to any such Offence, if the same be a Felony; or for aiding, abetting, or counselling the Commission of any such Offence, if the same be a Misdemeanor; no Person shall be deemed to be an incompetent Witness in support of any such Prosecution, by reason of any Interest which such Person may have or be supposed to have in respect of such Deed, Writing, Instrument, or other Matter.

III. And whereas it is expedient to prevent all Doubts respecting the Civil Rights of Persons convicted of Felonies not capital, who have undergone the Punishment to which they were adjudged; be it therefore enacted, That where any Offender hath been or shall be convicted of any Felony not punishable with Death, and hath endured or shall endure the Punishment to which such Offender hath been or shall be adjudged for the same, the Punishment so endured hath and shall have the like Effects and Consequences as a Pardon under the Great Seal as to the Felony whereof the Offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such Punishment, shall prevent or mitigate any Punishment to which the Offender might otherwise be lawfully sentenced on a subsequent Conviction for any other Felony.

IV. And whereas there are certain Misdemeanors which render the Parties convicted thereof incompetent Witnesses, and it is expedient to restore the Competency of such Parties after they have undergone their Punishment; be it therefore enacted, That where any Offender hath been or shall be convicted of any such Misdemeanor (except Perjury or Subornation of Perjury), and hath endured or shall endure the Punishment to which such Offender hath been or shall be adjudged for the same, such Offender shall not, after the Punishment so endured, be deemed to be by reason of such Misdemeanor an incompetent Witness in any Court or Proceeding, Civil or Criminal.

*Conviction for Crime*

Every Punishment for Felony, after it has been endured, shall have the Effect of a Pardon under the Great Seal.

*Ext. by* 1 W. 4, c. 37, § 9; 15 V., c. 27, § 1.

No Misdemeanor (except Perjury) shall render a Party an incompetent Witness after he has undergone the Punishment.

*Supra*, § 8.

1° GULIELMI IV. REGIS.

CAP. XXXVII.

*An Act to amend an Act of the Ninth Year of his late Majesty King George the Fourth, to facilitate Criminal Trials in Scotland, and to abridge the Period now required between the pronouncing of Sentence and Execution thereof, in Cases importing a Capital Punishment.*—[16th July 1830.]

§ IX. And be it enacted, That where any Person who hath been or shall be convicted of any Crime (except Perjury or Subornation of Perjury), and shall have endured the Punishment to which such Person shall have been sentenced for the same, such Person shall not thereafter be deemed, by reason of such Conviction or Sentence, an incompetent Witness in any Court or Proceeding, Civil or Criminal.

Conviction for a Crime not to disqualify a Witness.

*Am. and Ext. by* 15 V., c. 27, § 1. See 9 G. 4, c. 82, § 34.

*Quakers and  
Moravians.*

3° & 4° GULIELMI IV. REGIS.

CAP. XLIX.

[See 9 G. 4, c. 32.] *An Act to allow Quakers and Moravians to make Affirmation in all Cases where an Oath is or shall be required.—*  
[28th August 1833.]

Quakers and Moravians permitted to make a solemn Affirmation or Declaration instead of an Oath.

Penalty on affirming or declaring falsely.

*Ext. by 1 & 2 V., c. 77; 18 V., c. 25.*

Form of Declaration.

WHEREAS it is expedient and reasonable that the solemn Affirmation of Persons of the Persuasion of the People called Quakers, and of Moravians, should be allowed in all Cases where an Oath is or shall be required; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Person of the Persuasion of the People called Quakers, and every Moravian, be permitted to make his or her solemn Affirmation or Declaration, instead of taking an Oath, in all Places, and for all Purposes whatsoever, where an Oath is or shall be required either by the Common Law, or by any Act of Parliament already made or hereafter to be made, which said Affirmation or Declaration shall be of the same Force and Effect as if he or she had taken an Oath in the usual Form; and if any such Person making such solemn Affirmation or Declaration shall be lawfully convicted wilfully, falsely, and corruptly to have affirmed or declared any Matter or Thing which, if the same had been in the usual Form, would have amounted to wilful and corrupt Perjury, he or she shall incur the same Penalties and Forfeitures as by the Laws and Statutes of this Realm are enacted against Persons convicted of wilful and corrupt Perjury, any Law, Statute, or Custom to the contrary notwithstanding: Provided always, that every such Affirmation or Declaration shall be in the Words following; (that is to say,)

"I, A. B., being One of the People called Quakers, [or One of the Persuasion of the People called Quakers, or of the United Brethren called Moravians, as the Case may be,] do solemnly, sincerely, and truly declare and affirm."

§ II. Form of Affirmation in lieu of Oath of Abjuration.

3° & 4° GULIELMI IV. REGIS.

CAP. LXXXII.

*An Act to allow the People called Separatists to make a solemn Affirmation and Declaration instead of an Oath.—*  
[28th August 1833.]

Preamble.

WHEREAS there are in various Places in *Ireland* and in some Parts of *England* and elsewhere certain Dissenters from the United Church of *England* and *Ireland*, and from the Church of *Scotland*, commonly called Separatists, the Members of which Class or Sect of Dissenters, from con-

scientious Scruples, refuse to take an Oath in Courts of Justice and other Places, and in consequence thereof are exposed to great Losses and Inconveniences in their Trades and Concerns, and are subject to Fines and to Imprisonment for Contempt of Court, and the Community at large are deprived of the Benefit of their Testimony : And whereas it is therefore expedient that the said Sect called Separatists should be relieved in Manner hereinafter mentioned : Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Person for the Time being belonging to the said Sect called Separatists, who shall be required upon any lawful Occasion to take an Oath in any Case, where by Law an Oath is or may be required, shall, instead of the usual Form, be permitted to make his or her solemn Affirmation or Declaration in these Words following ; videlicet,

"I, A. B., do, in the Presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a Member of the religious Sect called Separatists, and that the taking of any Oath is contrary to my religious Belief, as well as essentially opposed to the Tenets of that Sect ; and I do also in the same solemn Manner affirm and declare :"

Which said solemn Affirmation or Declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same Force and Effect, to all Intents and Purposes, in all Courts of Justice and other Places whatsoever where by Law an Oath is or may be required, as if such Separatists had taken an Oath in the usual Form.

II. And be it further enacted, That if any Person making such solemn Affirmation or Declaration shall in fact not be One of the People commonly called Separatists, or shall wilfully, falsely, and corruptly affirm or declare any other Matter or Thing which, if the same had been sworn in the usual Form, would have amounted to wilful and corrupt Perjury, every such Person so offending shall incur the same Penalties and Forfeitures as by the Laws and Statutes of this Kingdom are or may be enacted or provided against Persons convicted of wilful and corrupt Perjury.

*Separatists.*

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Separatists, instead of an Oath, may make the following Affirmation.

Such Affirmation shall have the Effect of an Oath.

Persons making a false Affirmation to be subject to the same Punishment as for Perjury.

*Dissenters.*

1° &amp; 2° VICTORIÆ REGINÆ.

CAP. LXXVII.

*An Act for permitting Affirmation to be made instead of an Oath in certain Cases:—*[10th August 1838.]

[The Act of 7 & 8 W. 3, c. 34, applies to England only.]

Certain Persons may make Affirmation in lieu of Oath ;

*Ext.* 9 G. 4, c. 32.  
*Ext. by* 18 V., c. 25.

if convicted of having falsely affirmed, to be punished as if guilty of Perjury.

WHEREAS by an Act passed in the Reign of King William the Third, intituled, *An Act that the Solemnization, Affirmation, and Declaration of the People called Quakers shall be received instead of an Oath in the usual Form*, reciting that divers Dissenters, commonly called Quakers, refusing to take an Oath in Courts of Justice and other Places, are frequently imprisoned and their Estates sequestered by Process of Contempt issuing out of such Courts, to the Ruin of themselves and Families, it is enacted, that every Quaker on every Occasion (except on Criminal Trials) where an Oath is by Law required shall be permitted to make solemn Affirmation and Declaration in lieu thereof: And whereas the same Privilege has by subsequent Acts of Parliament been extended in all Cases to the Persons called Quakers and Moravians: And whereas it is expedient and fitting that the aforesaid Privilege should be extended to such Persons as have been Quakers and Moravians, but have ceased to belong to either of such religious Denominations of Christians, still continuing nevertheless to entertain conscientious Objections to the taking of an Oath: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for any Person who shall have been a Quaker or a Moravian to make solemn Affirmation and Declaration in lieu of taking an Oath, as fully as it would be lawful for any such Person to do if he still remained a Member of either of such religious Denominations of Christians, which said Affirmation or Declaration shall be of the same Force and Effect as if he or she had taken an Oath in the usual Form; and if any such Person making such solemn Affirmation or Declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any Matter or Thing which, if the same had been sworn in the usual Form, would have amounted to wilful and corrupt Perjury, every such Offender shall be subject to the same Pains, Penalties, and Forfeitures to which Persons convicted of wilful and corrupt Perjury are or shall be subject: Provided always, that

every such Affirmation or Declaration shall be in the Words following; that is to say,

“I, A. B., having been One of the People called Quakers [or One of the Persuasion of the People called Quakers, or of the United Brethren called Moravians, *as the Case may be*], and entertaining conscientious Objections to the taking of an Oath, do solemnly, sincerely, and truly declare and affirm.”

*Form of Oath.*

Form of Declaration.

### 1° & 2° VICTORIÆ REGINÆ.

#### CAP. CV.

*An Act to remove Doubts as to the Validity of certain Oaths.*  
—[14th August 1838.]

**BE** it declared and enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases in which an Oath may lawfully be and shall have been administered to any Person, either as a Juryman or a Witness, or a Deponent in any Proceeding, Civil or Criminal, in any Court of Law or Equity in the United Kingdom, or on Appointment to any Office or Employment, or on any Occasion whatever, such Person is bound by the Oath administered, provided the same shall have been administered in such Form and with such Ceremonies as such Person may declare to be binding; and every such Person, in case of wilful false Swearing, may be convicted of the Crime of Perjury in the same Manner as if the Oath had been administered in the Form and with the Ceremonies most commonly adopted.

All Persons to be bound by the Oath administered in the Form, etc., which such Persons may declare binding.

### 3° & 4° VICTORIÆ REGINÆ.

#### CAP. LIX.

*An Act for the Amendment of the Law of Evidence in Scotland.*—[7th August 1840.]

[Some other Disqualifications are removed by 15 V., c. 27, and 16 V., c. 20.]

**WHEREAS** the Law of Evidence in Scotland has in certain Respects been found inconvenient, and inconsistent with the Ends of Justice, and therefore requires

*Relationship.  
Examination.*

Witnesses admissible notwithstanding Relationship to Party adducing them.

Examination in initialibus may be dispensed with.

Presence in Court not to disqualify Witnesses in certain Cases.

See 15 V., c. 27, § 4.

Examination of Witnesses by the Parties against whom they are produced.

Act may be amended this Session.

Amendment: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act it shall by the Law of *Scotland* be no Objection to the Admissibility of any Witness that he or she is the Father or Mother, or Son or Daughter, or Brother or Sister, by Consanguinity or Affinity, or Uncle or Aunt, or Nephew or Niece, by Consanguinity, of any Party adducing such Witness in any Action, Cause, Prosecution, or other judicial Proceeding, Civil or Criminal; nor shall it be competent to any Witness to decline to be examined and give Evidence on the Ground of any such Relationship.

II. And be it enacted, That it shall not be necessary for any Judge in *Scotland*, or for any Person acting as Commissioner in taking Evidence in any Action, Cause, Prosecution, or other judicial Proceeding, Civil or Criminal, depending in *Scotland*, to examine any Witness in initialibus: Provided always, that it shall nevertheless be competent for any such Judge or Person acting as Commissioner, or the Party against whom the Witness shall be called, to examine any Witness in initialibus as heretofore.

III. And be it enacted, That in any Trial before any Judge of the Court of Session or Court of Justiciary, or before any Sheriff or Stewart in *Scotland*, it shall not be imperative on the Court to reject any Witness against whom it is objected that he or she has, without the Permission of the Court, and without the Consent of the Party objecting, been present in Court during all or any Part of the Proceedings; but it shall be competent for the Court, in its Discretion, to admit the Witness, where it shall appear to the Court that the Presence of the Witness was not the Consequence of culpable Negligence or criminal Intent, and that the Witness has not been unduly instructed or influenced by what took place during his or her Presence, or that Injustice will not be done by his or her Examination.

IV. And be it declared and enacted, That in any Action, Cause, Prosecution, or other judicial Proceeding, Civil or Criminal, where Proof shall be taken, whether by the Judge or a Person acting as Commissioner, it shall be competent for the Party against whom a Witness is produced and sworn in *causâ* to examine such Witness, not in *cross* only, but in *causâ*.

V. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.



## 6° &amp; 7° VICTORIÆ REGINÆ.

*Powers of Lord  
Chancellor.*

## CAP. LXXXII.

*An Act for extending to Scotland and Ireland the Power of the Lord High Chancellor to grant Commissions to enable Persons to take and receive Affidavits; and for amending the Law relating to Commissions for the Examination of Witnesses.*—[22d August 1843.]

[The Powers of this Act are extended to all Courts within the Empire, by 22 V., c. 20. As to Foreign Tribunals, see 19 & 20 V., c. 113.]

**WHEREAS** it would be convenient to extend to *Scotland* and *Ireland* the Power of the Lord High Chancellor of *Great Britain* to grant Commissions in order to enable Persons to take Affidavits, Affirmations, and Declarations: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, for the Time being, shall have such and the same Powers for granting Commissions for the purpose of enabling fit and proper Persons to take and receive Affidavits, Affirmations, and Declarations in *Scotland* and *Ireland*, and to perform the other Duties of Masters Extraordinary of the High Court of Chancery in *England*, as he and they now have in any Part of the Kingdom of *England*.

Lord Chancellor to have the same Powers for granting Commissions for taking Affidavits, etc., in *Scotland* and *Ireland* as he now has in *England*.

**II.** And be it enacted, That all and every Persons and Person wilfully swearing or affirming or declaring falsely in any Affidavit or Affirmation or Declaration to be made in that Part of the United Kingdom called *Scotland*, before any Person or Persons who shall be empowered to take Affidavits or Affirmations or Declarations in *Scotland* under the Authority aforesaid, shall be deemed guilty of Perjury, and shall be liable to Prosecution and Punishment for Perjury in the same Manner and to the same Effect as if such Persons or Person had wilfully sworn falsely as a Witness or Witnesses in open Court in any judicial Proceeding in *Scotland*, or in any Court of competent Jurisdiction in that Part of the United Kingdom in which such Person shall be apprehended on such a Charge; and it shall be competent to bring such Prosecution, if brought in *Scotland*, either in the Court of Justiciary or in the Sheriff Court of the County within which the Offence shall have been committed.

Persons wilfully swearing falsely in any Affidavit, etc., in *Scotland* deemed guilty of Perjury, and liable to Punishment in same Manner as Persons swearing falsely in open Court.

**III.** And be it enacted, That all and every Persons and Person wilfully swearing or affirming falsely in any Affi-

Persons wilfully swearing falsely in any Affidavit

*Attendance of Witnesses.*

or Affirmation in Ireland deemed guilty of Perjury, and liable to same Pains and Penalties as for swearing falsely in open Court.

## False Declaration, a Misdemeanor.

## What Fees may be taken.

## For compelling the Attendance of Witnesses.

*Ext. by 22 V., c. 20.*

davit or Affirmation to be made before any Person or Persons who shall be empowered to take Affidavits or Affirmations in *Ireland* under the Authority aforesaid shall be deemed guilty of Perjury, and shall incur and be liable to the same Pains and Penalties as if such Person or Persons had wilfully sworn or affirmed falsely in the open Court in which such Affidavit or Affirmation shall be intitled, or in the Court in which such Person or Persons shall be tried, and be liable to be prosecuted for such Perjury in any Court of competent Jurisdiction in *Ireland*, or in that Part of the United Kingdom in which such Person shall be apprehended on such a Charge; and if any Declaration which shall be made before any Person who shall be empowered to take Declarations in *Ireland* under the Authority aforesaid shall be false or untrue in any material Particular, the Person wilfully making such false Declaration shall be deemed guilty of a Misdemeanor, and shall be punishable accordingly.

IV. And be it enacted, That every such Person authorized to act under any such Commission as aforesaid shall be entitled to receive and take such and the same Fees, and none other, as Masters Extraordinary of the High Court of Chancery in *England* are now entitled to by virtue of the Orders of that Court, or of any Act or Acts of Parliament now in force.

V. And whereas there are at present no Means of compelling the Attendance of Persons to be examined under any Commission for the Examination of Witnesses issued by the Courts of Law or Equity in *England* or *Ireland*, or by the Courts of Law in *Scotland*, to be executed in a Part of the Realm subject to different Laws from that in which such Commissions are issued, and great Inconvenience may arise by reason thereof; be it therefore enacted, That if any Person, after being served with a written Notice to attend any Commissioner or Commissioners appointed to execute any such Commission for the Examination of Witnesses as aforesaid (such Notice being signed by the Commissioner or Commissioners, and specifying the Time and Place of Attendance), shall refuse or fail to appear and be examined under such Commission, such Refusal or Failure to appear shall be certified by such Commissioner or Commissioners, and it shall thereupon be competent, to or on behalf of any Party suing out such Commission, to apply to any of the Superior Courts of Law in that Part of the Kingdom within which such Commission is to be executed, or any One of the Judges of such Courts, for a Rule or Order to compel the Person or Persons so refusing or failing as aforesaid to appear before such Commissioner or Commissioners,

and to be examined under such Commission, and it shall be lawful for the Court or Judge to whom such Application shall be made by Rule or Order to command the Attendance and Examination of any Person to be named or the Production of any Writings or Documents to be mentioned in such Rule or Order.

*Penalty, etc.*

VI. And be it enacted, That upon the Service of such Rule or Order upon the Person named therein, if he or she shall not appear before such Commissioner or Commissioners as aforesaid for Examination, or to produce the Writings or Documents mentioned in such Rule or Order, the Disobedience to such Rule or Order shall, if the same shall happen in *England* or in *Ireland*, render the Person disobeying subject and liable to such Pains and Penalties as he or she would be subject and liable to by reason of Disobedience to a Writ of Subpœna in *England* or in *Ireland*, and if such Disobedience shall happen in *Scotland* it shall be competent to the Lord Ordinary on the Bills, upon an Application made to him by or on behalf of any Party suing out such Commission, and upon Proof of such Disobedience made before him, to direct the Issue of Letters of Second Diligence, according to the Forms of the Law of *Scotland*, to be used against the Person disobeying such Rule or Order.

Punishment of Persons disobeying Rule or Order to appear or to produce Writings or Documents required.

*Supra*, § 5.

VII. Provided always, and be it enacted, That every Person whose Attendance shall be so required shall be entitled to the like Conduct Money and Payment of Expenses and for Loss of Time as for and upon Attendance at any Trial in a Court of Law; and that no Person shall be compelled to produce under such Rule or Order any Writing or other Document that he or she would not be compellable to produce at a Trial, nor to attend on more than Two consecutive Days, to be named in such Rule or Order.

For Payment of Witnesses, etc.

*Supra*, § 5.

## 13° & 14° VICTORIÆ REGINÆ.

### CAP. XXXVI.

*An Act to facilitate Procedure in the Court of Session in Scotland.*—[29th July 1850.] See § 26, 27, 43.

[This Act is printed in Book II., COURT OF SESSION.]

*Repeal of  
Disqualifications.*

15<sup>th</sup> VICTORIÆ REGINÆ.

CAP. XXVII.

[The other leading Acts are 8 & 4 V., c. 59; and 16 V., c. 20.]

*An Act to amend the Law of Evidence in Scotland.*—[17<sup>th</sup> June 1852.]

WHEREAS it is expedient to alter and amend the Law of Evidence in *Scotland*: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; viz.,

Witnesses not to be excluded by reason of Crime, etc.

*Crime.*

Am. 1 W. 4, c. 37, § 9.

*Interest.*

Ext. 9 G. 4, c. 32, § 2.

[By 27 G. 3, c. 29, and 8 & 9 V., c. 83 (Poor Law Amendment Act), Ratepayers were declared to be competent Witnesses in Suits for Penalties to be applied to Purposes of Parish.]

*Agency.*

16 V., c. 20, § 2.

Right to examine Witnesses as to Credibility not affected.

Not competent to adduce as a Witness any Person who shall be acting as an Agent in the Action.

Where any Person adduced has been an Agent no Plea of Confidentiality allowable.

Party to an Action may be adduced as a Witness, unless

I. No Person adduced as a Witness in *Scotland* before any Court or before any Person having by Law or by Consent of Parties Authority to take Evidence, shall be excluded from giving Evidence, by reason of having been convicted of or having suffered Punishment for Crime, or by reason of Interest, or by reason of Agency or of partial Counsel, or by reason of having appeared without Citation, or by reason of having been precognosced subsequently to the Date of Citation; but every Person so adduced, who is not otherwise by Law disqualified from giving Evidence, shall be admissible as a Witness, and shall be admitted to give Evidence as aforesaid, notwithstanding of any Objections offered on the above mentioned Grounds: Provided always, that nothing herein contained shall affect the Right of any Party in the Action or Proceeding in which such Witness shall be adduced to examine him on any Point tending to affect his Credibility: Provided also, that it shall not be competent to adduce as a Witness in any Action or Proceeding any Person who shall at the Time when he is so adduced as a Witness be acting as Agent in the Action or Proceeding in which he is so adduced, excepting in so far as the same may be competent by the existing Law and Practice of *Scotland*; and where any Person who is or has been an Agent shall be adduced and examined as a Witness for his Client, touching any Matter or Thing, to prove which he could not competently have been adduced and examined according to the existing Law and Practice of *Scotland*, it shall not be competent to the Party adducing such Witness to object, on the Ground of Confidentiality, to any Question proposed to be put to such Witness on Matter pertinent to the Issue.

II. It shall be competent to adduce and to examine as a Witness as aforesaid in any Action or Proceeding any

Party to such Action or Proceeding, even although individually named in the Record or Proceeding, unless it shall be shown to the Satisfaction of the Court, or of the Person having Authority to take Evidence as aforesaid, that such Party has a substantial Interest in such Action or Proceeding, and is not merely nominally a Party thereto.

III. It shall be competent to examine any Witness who may be adduced in any Action or Proceeding as to whether he has on any specified Occasion made a Statement on any Matter pertinent to the Issue different from the Evidence given by him in such Action or Proceeding; and it shall be competent in the course of such Action or Proceeding to adduce Evidence to prove that such Witness has made such different Statement on the Occasion specified.

IV. It shall be competent to the presiding Judge or other Person before whom any Trial or Proof shall proceed, on the Motion of either Party, to permit any Witness who shall have been examined in the course of such Trial or Proof to be recalled.

V. All Statutes, Laws, and Practice now in force respecting Evidence in Scotland shall be and the same are hereby repealed, in so far as inconsistent or at variance with the Provisions of this Act, but the same shall in all other respects remain in full Force.

*Examination and Recall.*

It be shown that he has a substantial Interest.

Rep. by 16 V., c. 20, § 1.

See *Id.*, § 8.

See also 9 G. 4, c. 82, § 2.

Witness may be examined as to having made a different Statement.

Witness may be recalled, after Examination.

3 & 4 V., c. 59, § 8.

Laws and Practice inconsistent with this Act repealed.

16° VICTORIÆ REGINÆ.

CAP. XX.

*An Act to alter and amend an Act of the Fifteenth Year of her present Majesty for amending the Law of Evidence in Scotland.*—[9th May 1853.]

[See 3 and 4 V., c. 59.]

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

I. The Second Section of the Act of the Fifteenth Year of her present Majesty, Chapter Twenty-seven, is hereby repealed.

§ 2 of 15 & 16 V., c. 27, repealed. *Infra*, § 3.

II. So much of the First Section of the said Act as provides that "it shall not be competent to adduce as a Witness in any Action or Proceeding any Person who shall at the Time when he is so adduced as a Witness be acting as Agent in the Action or Proceeding in which he is so adduced, excepting in so far as the same may be competent

So much of § 1 of 15 & 16 V., c. 27, as to Incompetency of Persons who are Agents in Actions being Witnesses, repealed.

*Agency.  
Party.*

As to Examination  
of Witnesses,  
whether named in  
the Record or not.

Limited by 19 & 20  
V., c. 56, § 43 (*Ex-  
chequer*).  
See 9 G. 4, c. 82,  
§ 2.

This Act not to  
apply to Cases of  
Adultery, etc.

Adducing of Party  
as a Witness not  
to have Effect of  
Reference to his  
Oath.

Not to affect Au-  
thority of Courts  
as to judicial Ex-  
amination.

by the existing Law and Practice of *Scotland*," is hereby repealed.

III. It shall be competent to adduce and examine as a Witness in any Action or Proceeding in *Scotland* any Party to such Action or Proceeding, or the Husband or Wife of any Party, whether he or she shall be individually named in the Record or Proceeding or not; but nothing herein contained shall render any Person, or the Husband or Wife of any Person, who in any Criminal Proceeding is charged with the Commission of any indictable Offence, or any Offence punishable on summary Conviction, competent or compellable to give Evidence for or against himself or herself, his Wife or her Husband, excepting in so far as the same may be at present competent by the Law and Practice of *Scotland*, or shall render any Person compellable to answer any Question tending to criminate himself or herself, or shall in any Proceeding render any Husband competent or compellable to give against his Wife Evidence of any Matter communicated by her to him during the Marriage, or any Wife competent or compellable to give against her Husband Evidence of any Matter communicated by him to her during the Marriage.

IV. Nothing herein contained shall apply to any Action, Suit, or Proceeding instituted in *Scotland* in consequence of Adultery, or for dissolving any Marriage, or for Breach of Promise of Marriage, or in any Action of Declarator of Marriage, Nullity of Marriage, putting to Silence, Legitimacy, or Bastardy, or in any Action of Adherence or Separation.

V. The adducing of any Party as a Witness in any Cause or Proceeding by the adverse Party shall not have the Effect of a Reference to the Oath of the Party so adduced: Provided always, that it shall not be competent to any Party who has called and examined the opposite Party as a Witness thereafter to refer the Cause or any Part of it to his Oath, and that in all other respects the Right of Reference to Oath shall remain as at present established by the Law and Practice of *Scotland*.

VI. Nothing herein contained shall alter or affect the Authority or Practice of the Courts in *Scotland* as to judicial Examination.

## 17° &amp; 18° VICTORIÆ REGINÆ.

*Attendance of  
Witnesses.*

## CAP. XXXIV.

*An Act to enable the Courts of Law in England, Ireland, and Scotland to issue Process to compel the Attendance of Witnesses out of their Jurisdiction, and to give effect to the Service of such Process in any Part of the United Kingdom.—[10th July 1854.]*

**WHEREAS** great Inconvenience arises in the Administration of Justice from the Want of a Power in the Superior Courts of Law to compel the Attendance of Witnesses resident in One Part of the United Kingdom at a Trial in another Part, and the Examination of such Witnesses by Commission is not in all Cases a sufficient Remedy for such Inconvenience: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. If, in any Action or Suit now or at any Time hereafter depending in any of her Majesty's Superior Courts of Common Law at *Westminster* or *Dublin*, or the Court of Session or Exchequer in *Scotland*, it shall appear to the Court in which such Action is pending, or, if such Court is not sitting, to any Judge of any of the said Courts respectively that it is proper to compel the personal Attendance at any Trial of any Witness who may not be within the Jurisdiction of the Court in which such Action is pending, it shall be lawful for such Court or Judge, if in his or their Discretion it shall so seem fit, to order that a Writ called a Writ of Subpoena ad testificandum or of Subpoena duces tecum or Warrant of Citation shall issue in special Form, commanding such Witness to attend such Trial wherever he shall be within the United Kingdom, and the Service of any such Writ or Process in any Part of the United Kingdom shall be as valid and effectual to all Intents and Purposes as if same had been served within the Jurisdiction of the Court from which it issues.

II. Every such Writ shall have at Foot thereof a Statement or Notice that the same is issued by the special Order of the Court or Judge, as the Case may be; and no such Writ shall issue without such special Order.

III. In case any Person so served shall not appear according to the Exigency of such Writ or Process, it shall be lawful for the Court out of which the same issued, upon

Courts of Law in England, Ireland, and Scotland may issue Process to compel the Attendance of Witnesses although not within their Jurisdiction.

See 13 & 14 V., c. 36, § 43.

Statement to be made at Foot of Writ that it is issued by special Order.

Witnesses making default to be punished by the Courts of the

*Penalty, etc.*

Country in which  
the Process was  
served.

Proof made of the Service thereof, and of such Default, to the Satisfaction of the said Court, to transmit a Certificate of such Default under the Seal of the same Court, or under the Hand of One of the Judges or Justices of the same, to any of her Majesty's Superior Courts of Common Law at *Westminster*, in case such Service was had in *England*, or in case such Service was had in *Scotland* to the Court of Session or Exchequer at *Edinburgh*, or in case such Service was had in *Ireland* to any of her Majesty's Superior Courts of Common Law at *Dublin*; and the Court to which such Certificate is so sent shall and may thereupon proceed against and punish the Person so having made default in like Manner as they might have done if such Person had neglected or refused to appear in obedience to a Writ of Subpœna or other Process issued out of such last mentioned Court.

Persons not to be  
punished if it shall  
appear that suffi-  
cient Money has  
not been tendered  
to pay Expenses.

IV. None of the said Courts shall in any Case proceed against or punish any Person for having made Default by not appearing to give Evidence in obedience to any Writ of Subpœna or other Process issued under the Powers given by this Act, unless it shall be made to appear to such Court that a reasonable and sufficient Sum of Money to defray the Expenses of coming and attending to give Evidence, and of returning from giving such Evidence, had been tendered to such Person at the Time when such Writ of Subpœna or Process was served upon such Person.

Act not to prevent  
the issuing of a  
Commission to ex-  
amine Witnesses.

*See* 6 & 7 V., c. 82;  
22 V., c. 20.

V. Nothing herein contained shall alter or affect the Power of any of such Courts to issue a Commission for the Examination of Witnesses out of their Jurisdiction, in any Case in which, notwithstanding this Act, they shall think fit to issue such Commission.

Not to affect the  
Admissibility of  
Evidence where  
now receivable.

VI. Nothing herein contained shall alter or affect the Admissibility of any Evidence at any Trial where such Evidence is now by Law receivable, on the Ground of any Witness being beyond the Jurisdiction of the Court, but the Admissibility of all such Evidence shall be determined as if this Act had not passed.



## 18° VICTORIÆ REGINÆ.

## CAP. XXV.

*Affirmations.*

*An Act to allow Affirmations or Declarations to be made instead of Oaths in certain Cases in Scotland.*—[25th May 1855.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. If any Person called as a Witness in any Court of Civil Judicature in *Scotland*, or required or desiring to make an Affidavit or Deposition, shall refuse or be unwilling from alleged conscientious Motives to be sworn, it shall be lawful for the Court or Judge or other presiding Officer or Person qualified to take Affidavits or Depositions, on being satisfied of the Sincerity of such Objection, to permit such Person instead of being sworn to make his or her solemn Affirmation or Declaration in the Words following, videlicet,

"I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any Oath is, according to my religious Belief, unlawful; and I do solemnly, sincerely, and truly affirm and declare," *etc.*

Which solemn Affirmation and Declaration shall be of the same Force and Effect as if such Person had taken an Oath in the usual Form, and shall in like Manner infer the Pains of Perjury in case of Falschood.

II. It shall be lawful for her Majesty from Time to Time, by an Order in Council, to direct that all or any Part of the Provisions of this Act shall apply to all or any Court or Courts in *Scotland*; and such Order shall be notified by the Secretary of State to the Clerk or other Officer of the Court or Courts therein named respectively, and shall be published in the *Edinburgh Gazette*; and within One Month after such Order shall have been so notified and published, such Provisions shall extend and apply in Manner directed by such Order; and any such Order may be in like Manner from Time to Time altered and annulled.

Affirmation instead of Oath to be allowed in certain Cases.

*Ext.* 9 G. 4, c. 32;  
3 & 4 W. 4, c. 49;  
3 & 4 W. 4, c. 82;  
1 & 2 V., c. 77.

Her Majesty may, by Order in Council, direct Provisions of this Act to be applied to all Courts in Scotland.

*Order for  
Examination.*

19° & 20° VICTORIÆ REGINÆ.

CAP. LX.

See § 10-16.

*An Act to amend the Laws of Scotland affecting Trade and Commerce.*—[21st July 1856.]

[This Act is printed in Book II., COURT OF SESSION.]

19° & 20° VICTORIÆ REGINÆ.

CAP. CXIII.

[See 6 & 7 V., c. 82; and 22 V., c. 20, as to Commissions from British Tribunals.]

*An Act to provide for taking Evidence in her Majesty's Dominions in relation to Civil and Commercial Matters pending before Foreign Tribunals.*—[29th July 1856.]

WHEREAS it is expedient that Facilities be afforded for taking Evidence in her Majesty's Dominions in relation to Civil and Commercial Matters pending before Foreign Tribunals: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Order for Examination of Witnesses in this Country in relation to any Civil or Commercial Matter pending before a Foreign Tribunal.

I. Where, upon an Application for this Purpose, it is made to appear to any Court or Judge having Authority under this Act that any Court or Tribunal of competent Jurisdiction in a Foreign Country, before which any Civil or Commercial Matter is pending, is desirous of obtaining the Testimony in relation to such Matter of any Witness or Witnesses within the Jurisdiction of such first mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court or Judge to order the Examination upon Oath, upon Interrogatories or otherwise, before any Person or Persons named in such Order, of such Witness or Witnesses accordingly; and it shall be lawful for the said Court or Judge, by the same Order, or for such Court or Judge or any other Judge having Authority under this Act, by any subsequent Order, to command the Attendance of any Person to be named in such Order, for the purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Order, and to give all such Directions as to the Time, Place, and Manner of such Examination, and all

other Matters connected therewith, as may appear reasonable and just; and any such Order may be enforced in like Manner as an Order made by such Court or Judge in a Cause depending in such Court or before such Judge.

II. A Certificate under the Hand of the Ambassador, Minister, or other Diplomatic Agent of any Foreign Power, received as such by her Majesty, or in case there be no such Diplomatic Agent, then of the Consul General or Consul of any such Foreign Power at *London*, received and admitted as such by her Majesty, that any Matter in relation to which an Application is made under this Act is a Civil or Commercial Matter pending before a Court or Tribunal in the Country of which he is the Diplomatic Agent or Consul having Jurisdiction in the Matter so pending, and that such Court or Tribunal is desirous of obtaining the Testimony of the Witness or Witnesses to whom the Application relates, shall be Evidence of the Matters so certified; but where no such Certificate is produced other Evidence to that Effect shall be admissible.

III. It shall be lawful for every Person authorized to take the Examination of Witnesses by any Order made in pursuance of this Act to take all such Examinations upon the Oath of the Witnesses, or Affirmation in Cases where Affirmation is allowed by Law instead of Oath, to be administered by the Person so authorized; and if upon such Oath or Affirmation any Person making the same wilfully and corruptly give any false Evidence, every Person so offending shall be deemed and taken to be guilty of Perjury.

IV. Provided always, That every Person whose Attendance shall be so required shall be entitled to the like Conduct Money and Payment for Expenses and Loss of Time as upon Attendance at a Trial.

V. Provided also, That every Person examined under any Order made under this Act shall have the like Right to refuse to answer Questions tending to criminate himself, and other Questions, which a Witness in any Cause pending in the Court by which or by a Judge whereof or before the Judge by whom the Order for Examination was made would be entitled to; and that no Person shall be compelled to produce under any such Order as aforesaid any Writing or other Document that he would not be compellable to produce at a Trial of such a Cause.

VI. Her Majesty's Superior Courts of Common Law at *Westminster* and in *Dublin* respectively, the Court of Session in *Scotland*, and any Supreme Court in any of her Majesty's Colonies or Possessions abroad, and any Judge of any such Court, and every Judge in any such Colony or Possession who by any Order of her Majesty in Council may be ap-

*Examination.  
Rights of Witness.*

Certificate of Ambassador, etc., sufficient Evidence in support of Application.

Examination of Witnesses to be taken upon Oath.

Affirmation, 9 G. 4, c. 32; 1 & 2 V., c. 77; 18 V., c. 23.

Persons giving false Evidence guilty of Perjury.

Payment of Expenses.

Persons to have Right of Refusal to answer Questions and to produce Documents.

Certain Courts and Judges to have Authority under this Act.

*Colonial Possessions.*

Lord Chancellor, etc., to frame Rules, etc.

pointed for this Purpose, shall respectively be Courts and Judges having Authority under this Act: Provided, that the Lord Chancellor, with the Assistance of Two of the Judges of the Courts of Common Law at *Westminster*, shall frame such Rules and Orders as shall be necessary or proper for giving effect to the Provisions of this Act, and regulating the Procedure under the same.

## 22° VICTORIÆ REGINÆ.

## CAP. XX.

[See 6 & 7 V., c. 82; and the Act of 19 & 20 V., c. 113, for enforcing Commissions of Foreign Tribunals.]

*An Act to provide for taking Evidence in Suits and Proceedings pending before Tribunals in her Majesty's Dominions in Places out of the Jurisdiction of such Tribunals.*—[19th April 1859.]

WHEREAS it is expedient that Facilities be afforded for taking Evidence in or in relation to Actions, Suits, and Proceedings pending before Tribunals in her Majesty's Dominions in Places in such Dominions out of the Jurisdiction of such Tribunals: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Order for Examination of Witnesses out of the Jurisdiction in relation to any Suit pending before any Tribunal in her Majesty's Possessions.

*Ext. 6 & 7 V., c. 82, § 5, 6, 7.  
See 13 & 14 V., c. 36, § 25, 26, 49.*

I. Where upon an Application for this Purpose it is made to appear to any Court or Judge having Authority under this Act that any Court or Tribunal of competent Jurisdiction in her Majesty's Dominions has duly authorized, by Commission, Order, or other Process, the obtaining the Testimony in or in relation to any Action, Suit, or Proceeding pending in or before such Court or Tribunal of any Witness or Witnesses out of the Jurisdiction of such Court or Tribunal, and within the Jurisdiction of such first mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court or Judge to order the Examination before the Person or Persons appointed, and in Manner and Form directed by such Commission, Order, or other Process as aforesaid, of such Witness or Witnesses accordingly; and it shall be lawful for the said Court or Judge by the same Order, or for such Court or Judge, or any other Judge having Authority under this Act, by any subsequent Order, to command the Attendance of any Person to be named in such Order for the

purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Order, and to give all such Directions as to the Time, Place, and Manner of such Examination, and all other Matters connected therewith, as may appear reasonable and just, and any such Order may be enforced, and any Disobedience thereof punished, in like Manner as in case of an Order made by such Court or Judge in a Cause depending in such Court or before such Judge.

*Rights of Witness examined.*

II. Every Person examined as a Witness under any such Commission, Order, or other Process as aforesaid, who shall upon such Examination wilfully and corruptly give any false Evidence, shall be deemed and taken to be guilty of Perjury.

Penalty on Persons giving false Evidence.

III. Provided always, That every Person whose Attendance shall be so ordered shall be entitled to the like Conduct Money, and Payment for Expenses and Loss of Time, as upon Attendance at a Trial.

Payment of Expenses.

IV. Provided also, That every Person examined under any such Commission, Order, or other Process as aforesaid, shall have the like Right to refuse to answer Questions tending to criminate himself, and other Questions which a Witness in any Cause pending in the Court by which, or by a Judge whereof, or before the Judge by whom the Order for Examination was made, would be entitled to; and that no Person shall be compelled to produce under any such Order as aforesaid any Writing or other Document that he would not be compellable to produce at a Trial of such a Cause.

Power to Persons to refuse to answer Questions to criminate himself, or to produce Documents.

V. Her Majesty's Superior Courts of Common Law at *Westminster* and in *Dublin* respectively, the Court of Session in *Scotland*, and any Supreme Court in any of her Majesty's Colonies or Possessions abroad, and any Judge of any such Court, and every Judge in any such Colony or Possession who, by any Order of her Majesty in Council, may be appointed for this Purpose, shall respectively be Courts and Judges having Authority under this Act.

Certain Courts and Judges to have Authority under this Act.

VI. It shall be lawful for the Lord Chancellor of *Great Britain*, with the Assistance of Two of the Judges of the Courts of Common Law at *Westminster*, so far as relates to *England*, and for the Lord Chancellor of *Ireland*, with the Assistance of Two of the Judges of the Courts of Common Law at *Dublin*, so far as relates to *Ireland*, and for Two of the Judges of the Court of Session, so far as relates to *Scotland*, and for the Chief or only Judge of the Supreme Court in any of her Majesty's Colonies or Possessions abroad, so far as relates to such Colony or Possession, to frame such Rules and Orders as shall be necessary or proper

Power to Judges to frame Rules, etc., for giving effect to Provisions of this Act.

Case for Opinion.

for giving effect to the Provisions of this Act, and regulating the Procedure under the same.

22° & 23° VICTORIÆ REGINÆ.

CAP. LXIII.

*An Act to afford Facilities for the more certain Ascertainment of the Law administered in one Part of her Majesty's Dominions when pleaded in the Courts of another Part thereof.*—[13th August 1859.]

WHEREAS great Improvement in the Administration of the Law would ensue if Facilities were afforded for more certainly ascertaining the Law administered in one Part of her Majesty's Dominions when pleaded in the Courts of another Part thereof: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Courts in one Part of her Majesty's Dominions may remit a Case for the Opinion in Law of a Court in any other Part thereof.

I. If in any Action depending in any Court within her Majesty's Dominions, it shall be the Opinion of such Court, that it is necessary or expedient for the proper Disposal of such Action to ascertain the Law applicable to the Facts of the Case as administered in any other Part of her Majesty's Dominions on any Point on which the Law of such other Part of her Majesty's Dominions is different from that in which the Court is situate, it shall be competent to the Court in which such Action may depend to direct a Case to be prepared setting forth the Facts, as these may be ascertained by Verdict of a Jury or other Mode competent, or may be agreed upon by the Parties, or settled by such Person or Persons as may have been appointed by the Court for that Purpose in the event of the Parties not agreeing, and upon such Case being approved of by such Court or a Judge thereof, they shall settle the Questions of Law arising out of the same on which they desire to have the Opinion of another Court, and shall pronounce an Order remitting the same, together with the Case, to the Court in such other Part of her Majesty's Dominions, being One of the Superior Courts thereof, whose Opinion is desired upon the Law administered by them as applicable to the Facts set forth in such Case, and desiring them to pronounce their Opinion on the Questions submitted to them in the Terms of the Act; and it shall be competent to any of the Parties

to the Action to present a Petition to the Court whose Opinion is to be obtained, praying such last mentioned Court to hear Parties or their Counsel, and to pronounce their Opinion thereon in Terms of this Act, or to pronounce their Opinion without hearing Parties or Counsel; and the Court to which such Petition shall be presented shall, if they think fit, appoint an early Day for hearing Parties or their Counsel on such Case, and shall thereafter pronounce their Opinion upon the Questions of Law as administered by them which are submitted to them by the Court; and in order to their pronouncing such Opinion they shall be entitled to take such further Procedure thereupon as to them shall seem proper.

*Procedure on  
Opinion.*

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II. Upon such Opinion being pronounced, a Copy thereof, certified by an Officer of such Court, shall be given to each of the Parties to the Action by whom the same shall be required, and shall be deemed and held to contain a correct Record of such Opinion.

Opinion to be authenticated and certified Copy given.

III. It shall be competent to any of the Parties to the Action, after having obtained such certified Copy of such Opinion, to lodge the same with an Officer of the Court in which the Action may be depending, who may have the official Charge thereof, together with a Notice of Motion, setting forth that the Party will, on a certain Day named in such Notice, move the Court to apply the Opinion contained in such certified Copy thereof to the Facts set forth in the Case hereinbefore specified, and the said Court shall thereupon apply such Opinion to such Facts, in the same Manner as if the same had been pronounced by such Court itself upon a Case reserved for Opinion of the Court, or upon special Verdict of a Jury; or the said last mentioned Court shall, if it think fit, when the said Opinion has been obtained before Trial, order such Opinion to be submitted to the Jury with the other Facts of the Case as Evidence, or conclusive Evidence as the Court may think fit, of the Foreign Law therein stated, and the said Opinion shall be so submitted to the Jury.

Opinion to be applied by the Court making the Remit.

IV. In the event of an Appeal to her Majesty in Council or to the House of Lords in any such Action, it shall be competent to bring under the Review of her Majesty in Council or of the House of Lords the Opinion pronounced as aforesaid by any Court whose Judgments are reviewable by her Majesty in Council or by the House of Lords, and her Majesty in Council or that House may respectively adopt or reject such Opinion of any Court whose Judgments are respectively reviewable by them, as the same shall appear to them to be well founded or not in Law.

Her Majesty in Council or House of Lords on Appeal may adopt or reject Opinion.

V. In the Construction of this Act, the Word "Action"

*Miscellaneous.*Interpretation of  
Terms.*Exchequer, see* 19  
& 20 V., c. 56, § 1,  
20.

shall include every judicial Proceeding instituted in any Court, Civil, Criminal, or Ecclesiastical ; and the Words "Superior Courts" shall include, in *England*, the Superior Courts of Law at *Westminster*, the Lord Chancellor, the Lords Justices, the Master of the Rolls or any Vice Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate ; in *Scotland*, the High Court of Justiciary, and the Court of Session acting by either of its Divisions ; in *Ireland*, the Superior Courts of Law at *Dublin*, the Master of the Rolls, and the Judge of the Admiralty Court ; and in any other Part of her Majesty's Dominions, the Superior Courts of Law or Equity therein.



BOOK V.

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ACTS OF SEDERUNT

OF THE

LORDS OF COUNCIL AND SESSION.



# ACTS OF SEDERUNT

RELATING TO

PROCEDURE IN THE COURTS

OF

## EXCHEQUER, SESSION, AND TEINDS.

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*Act of Sederunt relative to the Act of Parliament 33d Geo. III., c. 74, for rendering the Payment of Creditors more equal and expeditious.*—[14th December 1805.]

I. That where any Person against whom legal Diligence is meant to be executed, or who is to be cited as a Party in any judicial Proceeding, has left the ordinary Place of his Residence, which may render it doubtful whether he is within the Kingdom of *Scotland* or not, and consequently whether the Charge or Citation against him ought to be executed at his Dwelling House, or at the Market Cross of *Edinburgh*, and Pier and Shore of *Leith*, when he is not personally found, it shall in Time coming be held and presumed, that the said Person, after Forty Days Absence from his usual Place of Residence, but not sooner, is forth of the Kingdom of *Scotland*; and therefore, that within the said Forty Days the Citation or Charge may be at his late Dwelling House; but, after that Period, must be at the Market Cross of *Edinburgh*, and Pier and Shore of *Leith*, unless he be personally found, or, prior to the Execution, shall have taken up some other known and fixed Residence within *Scotland*.

[The whole of this Act is now superseded by the repeal of the Statute to which it refers, except Art. 1.]

[By 6 Geo. IV., c. 120, § 53, it is "provided and declared, That where a Person not having a Dwelling House in *Scotland* occupied by his Family or Servants shall have left his usual

Augmentation and  
Locality.

Place of Residence, and have been therefrom absent during the Space of Forty Days without having left Notice where he is to be found within *Scotland*, he shall be held to be absent from *Scotland*, and be charged or cited according to the Forms herein prescribed accordingly.”]

[Affected by A. of  
S. 20 June 1888.]

*Act of Sederunt concerning the Form of Proceeding in Processes of Augmentation, Modification, and Locality.—*  
[Edinburgh, 5th July 1809.]

Recital.

WHEREAS by an Act of Parliament passed in the 48th Year of the Reign of his present Majesty, intituled, “An Act for defining and regulating the Powers of the Commission of Teinds in augmenting and modifying the Stipends of the Clergy of *Scotland*,” the Lords of Council and Session, Commissioners for Plantation of Kirks and Valuation of Teinds, are empowered and required to establish Rules and Regulations for abridging the Forms and Expense of Citation of Heritors and others, and for ascertaining the Facts and Circumstances of the Case, and to establish Regulations for executing the Business committed to them by the Act 1707, Cap. 9, and by the said Act of the 48th Year of his present Majesty.

Form of Citation  
in Processes of  
Augmentation, etc.

The Lords of Council and Session, Commissioners aforesaid, having taken this Matter into their Consideration, do enact,—*Primo*, That from and after the 12th Day of July 1809, it shall not be necessary for the Pursuer of any Process of Augmentation, Modification, and Locality to cite the Titular or Tacksman of the Teinds, or Heritors, Liferenters, or others, Intromitters with the Teinds, in the Manner or upon the induciæ heretofore required; but that, as soon as a Summons of Augmentation, Modification, and Locality is raised and signeted, it shall be competent to the Pursuer to cause cite the Titulars and Tacksman of the Teinds, Heritors and Liferenters, and all others having, or pretending to have, interest in the Teinds of the Parish, by the Precentor giving public Notice from his Desk, immediately before the Congregation is dismissed from the Forenoon Service, that the Minister of the Parish has raised a Summons of Augmentation of his Stipend, which will be called in Court on *Wednesday*, being the

Day of  
next to come, not being less than *Six Weeks* after the Date of the First Notice, and that this Notice shall be repeated for Three several *Sundays* at the Time above mentioned; and a Certificate by the Precentor, that such public Notice has been given upon Three several *Sundays*, in presence of Two of the Parishioners, who shall subscribe

*Augmentation and  
Locality.*

as Witnesses, shall be forthwith transmitted by him to the Pursuer's Agent. A Notice in Writing, in like Terms, shall also be affixed to the most patent Door of the Church, by a Messenger at Arms, or a Constable, on the same Day when the First Notice is given from the Precentor's Desk; and such Messenger or Constable shall return a Certificate, subscribed by himself and Two Witnesses, that such Notice has been affixed by him. The Pursuer shall also cause Notice be inserted Three several Days in the *Edinburgh Evening Courant*, the *Caledonian Mercury*, and *Edinburgh Advertiser*, that he has raised a Summons of Augmentation, Modification, and Locality, which will be called in Court on Wednesday, being the \_\_\_\_\_ Day of \_\_\_\_\_, not being less than *Six Weeks* from the Date of the First Advertisement. The Mode of Citation, and the induciæ above mentioned, shall be deemed sufficient, although One or more of the Defenders shall be a Pupil or Minor out of the Kingdom, at the Time such Citation shall be given. When it is necessary to call the Officers of State for his Majesty's Interest, it shall be done in the Manner that has hitherto been in use, upon the induciæ of *Six Weeks*. And it is farther enacted, That it shall be a sufficient Citation to the Moderator and Clerk of the Presbytery, that the Pursuer himself shall write to the said Moderator and Clerk, in Terms of the 17th Section of the Statute; Provided always, that such Letters shall be inserted in the Presbytery Record *One Month* before the Summons is called in Court; and such Certificate by the Precentor of the Parish, and Messenger or Constable, with the Notices in the Newspapers above mentioned, Execution of Citation to the Officers of State, and Certificate from the Presbytery Clerk, that the Pursuer has written to the Moderator and Clerk of Presbytery in Terms of the Statute, and that the Letters are recorded in the Presbytery Books, shall be held as sufficient Citation to all Parties. When any of the Defenders die during the Dependence of the Process, his Heir may be called by a Diligence in the Manner and upon the induciæ hitherto used; but such Diligence may be executed either by a Messenger at Arms or a Constable; and when it is necessary to waken a Process, it must be done by a Summons of Wakening, in which all Parties having Interest must be called in the same Manner, and on the same induciæ, as in the original Process.

II. The Pursuer of every Process of Augmentation shall, as soon as the Summons is signeted, lodge with the Clerk of Court a Note, stating the Amount of the Stipend, distinguishing how much is paid in Money, and how much in Victual, and in what species of Victual, and the Measure

Documents to be  
lodged by Pursuer.

Augmentation and Locality.

Heritors to be held confest upon Rental, or to take a Day to depone.

Remit to Lord Ordinary to prepare a Scheme.

After Augmentation granted, Scheme of Locality to be prepared in Outer House.

by which it is paid ; and also stating the Amount of the Communion Elements. The Pursuer must also, at the same Time, produce a Rental of the Parish, distinguishing the Rent of each Heritor.

III. As soon as the Summons is called in Court, the Pursuer may enrol it ; and all concerned will be allowed to see the Summons and Writings therewith produced, in the Clerk's Hands for *Fourteen Days* : After the Elapse of the Time allowed for seeing, the Pursuer may enrol the Cause, when a Proof will be allowed of the Rental of *Minors' Lands* ; and the Heritors who are Major, will be held as confest upon the Rental, unless One or more of them shall take a Day to depone, in which Case a Day shall be assigned to the whole Heritors who are Major to depone on the Rental ; and One Act and Commission shall be extracted for the whole, upon which any of the Heritors or their Factors may depone, and upon which a Proof of the Rent of *Minors' Lands* may be led ; such Act and Commission to be extracted at the Expense of the Heritors deponing : But the Rental of *Minors' Lands* may be proved by a Certificate thereof under the Hand of any One of the Tutors or Curators of such Minor, or of their Factor, without the Necessity of extracting any Act and Commission.

IV. When the Day assigned for deponing and proving shall have elapsed, the Pursuer may again enrol the Cause, and pray that the Term may be circumduced, and that a Remit shall be made to an Ordinary to prepare a Scheme of the Rental, either according to the Rental which the Minister gave out amongst with his Summons, if there has been no Proof, or according to the Proof which has been led, and the Certificates of Rentals and Decrees of Valuation produced.

V. When the Scheme of the proven Rental is prepared, the Cause may be enrolled, in order that Parties may be heard upon the Merits. When the Court grants an Augmentation, the Cause will be remitted to an Ordinary to prepare a Locality and to report. The Pursuer of the Augmentation may, immediately after such Remit, enrol the Cause before the Lord Ordinary, and crave his Lordship to ordain the Heritors to produce their Rights to their Teinds, if they any have, in the Hands of the Clerk, within a Time to be specified in the Interlocutor, not being less than *Three Months* from the Date thereof ; with Certification, that, after the Elapse of that Time, a Remit shall be made to the Clerk to prepare a Scheme of Locality, either according to the proven Rental, in case no Rights are produced, or according to the Rights and Interests which are produced by the Heritors ; and that this Scheme so pre-

pared shall immediately be approved by the Lord Ordinary, and afterwards by the Court, as an interim Scheme, according to which the Minister's Stipend shall be paid, ay and until a final Locality shall be settled, and the Minister furnished by the common Agent with an extracted Decree at the Expense of the Heritors, for which he is entitled to take credit in his Account. The Lord Ordinary shall, at the same Time, ordain the Heritors, or their Agents, to meet for the purpose of naming a Person to be suggested to the Lord Ordinary as common Agent for conducting the Locality. A short Notice of this Interlocutor shall be inserted in the *Edinburgh Evening Courant*, *Caledonian Mercury*, and *Advertiser*, the Expense thereof to be paid by the common Agent out of the general Fund.

*Augmentation and Locality.*

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Appointment of common Agent.

VI. And in order to enable the Court to carry the said Act into Execution, the Sheriff and Stewart Clerk of every Sheriffdom and Stewartry is hereby required, within *Three Months* from the Date hereof, to transmit to the Teind Clerk a Certificate of the Fiars for the last Seven Years, distinguishing the Fiars of each Year; and every Sheriff and Stewart Clerk is farther required to transmit to the Teind Clerk a Certificate of the Fiars of every Year in all Time coming, within Fourteen Days after they have been struck, as they shall be answerable.

Certificate of the Fiars to be transmitted.

(Signed) RO. BLAIR, *I.P.D.*

*Note.*—This Act is in force, so far as not inconsistent with or regulated by A. S. 12th November 1825, regarding Teind Court.

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*Rules and Regulations for the Government of the Jury Court. Reported by the Lords Commissioners of the Jury Court to the Lords of Council and Session, and approved by their Lordships.*—[3d July 1823.]

THE Lords Commissioners of the Jury Court, duly assembled under the Authority of the Statutes in such Case made and provided, to consider of Rules and Regulations for the Direction and Government of the Jury Court, in place of those repealed by the Act of Sederunt, bearing Date this Day, report to the Court of Session and Jury Court, duly assembled under the Authority aforesaid, the following Rules and Regulations, as fit and necessary to be enacted and ordained for the Purpose aforesaid.

*Note.*—The whole of this A. S. is expressly repealed by A. S. 29th November 1825, but the Practical Forms annexed to the Act are reserved by Section 61 of said Act, viz.

Forms for Jury  
Procedure.

## PRACTICAL FORMS.

*Notice for Order to lodge Condescendences or Answers.*

In the Jury Court,

A. B. \_\_\_\_\_ Pursuer.

C. D. \_\_\_\_\_ Defender.

\*TAKE NOTICE, that on the \_\_\_\_\_ instant, A. B. the  
will move the Court to order the Defender to lodge  
(Condescendence or Answers, as the Case may be), within  
\_\_\_\_\_ days. Dated this \_\_\_\_\_ Day of \_\_\_\_\_ 18

(Signed) E. F. Agent for the Pursuer.

To G. H. Agent for the Defender.

*Notice of a Motion to get a Case remitted back to the Court  
of Session.*

TAKE NOTICE, That on the \_\_\_\_\_ Day of \_\_\_\_\_ next,  
A. B. the Pursuer will move the Court for a Rule to show  
Cause why this Case should not be remitted back to the  
Court of Session, in respect (*Here state the Grounds on  
which this Remit is craved*). Dated, etc.

*Notice of Trial.*

A. B. \_\_\_\_\_ Pursuer,

and

C. D. \_\_\_\_\_ Defender.

TAKE NOTICE, That this Cause will be tried in *Edin-  
burgh*, at the next Sittings of the Jury Court after the  
Term, or at such Time as the Court may appoint : (or  
if the Trial is to be in the Circuit Town), at the next Cir-  
cuit of the Jury Court, to be holden at \_\_\_\_\_ in the County  
of \_\_\_\_\_ in the Court House of the Court of Justiciary  
there, or in such other Place as shall be appointed by the  
Jury Court. Dated, etc.

\_\_\_\_\_ Agent for the said Pursuer.

To Mr \_\_\_\_\_ Agent for the Defender.

*Countermand of Notice of Trial.*

A. B. \_\_\_\_\_ Pursuer,

and

C. D. \_\_\_\_\_ Defender.

I do hereby countermand the Notice of Trial given you  
in this Cause. Dated, etc.

Yours, etc.

\_\_\_\_\_ Agent for the Pursuer.

To Mr \_\_\_\_\_, Agent for  
the said Defender.

*Mutatis mutandis*, if it should be the Defender's Notice of  
Trial.

\* NOTE.—All Notices of Motions must be lodged in the Jury Court Office,  
Register House, in Terms of the Regulations.



PRECEPTS FOR A COMMON JURY ISSUE OF COURSE,  
ACCORDING TO THE FORM USED IN THE OFFICE.

*Forms for Jury  
Procedure.*

*Notice for applying for a Special Jury.*

In the Jury Court,

A. B. ——— Pursuer.

C. D. ——— Defender.

TAKE NOTICE, That A. B. the Pursuer, or C. D. the Defender (*as the Case may be*), will make Application on the      Day of      to this Honourable Court, according to the Statute, for a Special Jury in this Cause, in Terms of the Rule and Regulation in such Case made and provided. Dated, *etc.*

*Notice for applying for a View.*

In the Jury Court,

A. B. ——— Pursuer.

C. D. ——— Defender.

TAKE NOTICE, That A. B. the Pursuer, or C. D. the Defender (*as the Case may be*), will make Application on the      Day of      , to this Honourable Court, according to the Statute, for a View in this Cause, in Terms of the Rule and Regulation in such Case made and provided. Dated this      Day of      .

*Notice to put off a Trial on account of the Absence of a  
material Witness, or for other necessary Cause.*

In the Jury Court,

A. B. ——— Pursuer.

and

C. D. ——— Defender.

TAKE NOTICE, That this Honourable Court will be moved on      , or so soon after as Counsel can be heard, that the Trial of this Cause may be put off until next, on account of the Absence of a material Witness on the part of the Pursuer (*or Defender, as the Case may be*); and in the mean time, that all farther Proceedings be stayed. Dated, *etc.*

Yours, *etc.*

——— Agent for the Pursuer.

——— Agent for the Defender.

To Mr ——— Pursuer's Agent.

Or, Mr ——— Defender's Agent.

*If this Cause is not the Absence of a Witness, but some other necessary Cause for putting off the Trial, that Cause must be inserted specially in the Notice, and also in the Affidavit to support the Notice.*

*Forms for Jury  
Procedure.*

*Oath in Support thereof.*

In the Jury Court,

A. B. ——— Pursuer.

C. D. ——— Defender.

Compeared E. F. of \_\_\_\_\_, Agent of the above named  
Defender (or the Agent of the above named Pursuer, as the  
Case may be), or the above named Defender (or Pursuer  
as the Case may be), depones, That on or about the  
Day of \_\_\_\_\_ instant (or last) Notice was given, that the  
Cause would be tried on the \_\_\_\_\_ Day of  
\_\_\_\_\_ instant, in the Jury Court, to be holden at *Edinburgh*, (if the Trial is to be held in the Circuit Towns) to be holden  
at \_\_\_\_\_, in the County of \_\_\_\_\_, in the Court of the  
Circuit Court of Justiciary there (or other Place appointed  
for the Trial); and that E. F. late of, etc., will be a material  
Witness for the said Defender, on the Trial of the said  
Cause, as he is advised, and believes; and that he cannot  
safely proceed to the Trial thereof without the Testimony  
of the said E. F.; And he farther swears, that in consequence  
of the Notice of Trial, so given as aforesaid, by  
this Deponent, caused Inquiry to be made, etc. [*State the  
Nature and Result of the Inquiry made after the Witness  
and the Time when he is likely to attend.*]

N.B.—To be varied according to the Circumstances  
of the Case. (Signed) E. F.

Sworn before the Court, }  
the \_\_\_\_\_ Day of }  
Eighteen hundred }

*Notice of Motion for a New Trial.*

TAKE NOTICE, That on the \_\_\_\_\_ Day of  
A. B. the Pursuer (or Defender, as the Case may be), will  
move the Court for a Rule to show Cause why the Verdict  
in this Case should not be set aside, and a new Trial  
granted; and in the mean Time, that all farther Proceedings  
be stayed. Dated, etc.

*Motion for Expenses.*

In the Jury Court,

A. B. ——— Pursuer.

C. D. ——— Defender.

TAKE NOTICE, That on the \_\_\_\_\_ instant, A. B. the Pursuer,  
will move the Court to find the Defender liable in the  
Expenses incurred in this Case, and to remit the Account  
thereof to the Auditor. Dated

To G. H. Agent for  
the Defender.

E. F. Agent for  
the Pursuer.

**TAKE NOTICE**, That on the                      instant, *A. B.* the  
 rsuer, will move the Court to approve of the Auditor's  
 report in this Case, and to enter up Judgment in Terms  
 the Statute. Dated

*Forms for Jury  
 Procedure.*

**TAKE NOTICE**, That on the                      instant, *C. D.* the  
 efender, will move the Court to remit to the Auditor to  
 consider his Report in this Case, and also to delay enter-  
 g Judgment; (*here state the Grounds on which such*  
*delay is craved*). Dated

*First Diligence for summoning Witnesses.*

GEORGE THE FOURTH, by the Grace of God, of the  
 United Kingdom of *Great Britain and Ireland*, King, De-  
 ander of the Faith, to                      Messenger  
 t Arms, our Sheriffs in that Part, conjunctly and severally,  
 pecially constituted, greeting: FORASMUCH as, in an Ac-  
 ion raised before                      , at the Instance  
 of *A. B.* of                      , against *C. D.* of

                    , a certain Issue or certain Issues  
 were approved of by the Lords Commissioners of the Jury  
 Court in Civil Causes, in pursuance of the Statutes in such  
 Case made and provided; and that the said Issue or Issues  
 is, or are, to be so tried by a Jury before the said Lords  
 Commissioners at                      , and within the Court  
 Room there, on the                      Day of                      next, at  
 o'clock, at which Time and Place all Witnesses and Havers  
 who may be lawfully cited by the Parties are required to  
 attend, in order to be examined upon Oath.

OUR WILL IS HEREFOR, and We charge you, that ye  
 lawfully summon, warn and charge  
 personally, or at their respective Dwelling Places, to com-  
 pear before the said Jury Court, Time and Place foresaid,  
 with Continuation of Days, to answer at the Instance of the  
 said                      : That is to say, to bear  
 honest and true Testimony upon Oath, in so far as they  
 know, or shall be inquired at, regarding the Matters to be  
 then and there tried: As also, to bring with them, exhibit  
 and produce, before the said Jury Court, upon Oath, all  
 such Writings as they may have in their Hand, Custody or  
 Keeping, which they may be required so to exhibit and  
 produce, in Evidence of any of the Matters aforesaid, and  
 that at their highest Peril, with Certification as effeirs: \*  
 According to Justice, as ye will answer to us thereupon.  
 Which to do, we commit to you, and each of you, full  
 Power by these our Letters, delivering them by you duly  
 executed and indorsed again to the Bearer. Given under

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Procedure.*

our Signet, at *Edinburgh*, the \_\_\_\_\_ Day of  
in the \_\_\_\_\_ Year of our Reign, 18 .

By Order of the Lords Commissioners of the Jury Court  
in Civil Causes.

*Second Diligence for summoning Witnesses.*

\* AND IN CASE the Persons to be summoned as afore-  
said, as Witnesses and Havers, SHALL FAIL TO APPEAR  
before the said Jury Court, Time and Place foresaid, and  
pay Obedience to the Citation given them; in that Event  
we further command and charge you, that ye, in our  
Name and Authority, command and charge the Sheriffs of  
our Sherifffdoms, the Bailies of our Regalities and Bailiaries,  
the Stewarts of our Stewartries, the Provosts and Bailies of  
our Burghs, and their respective Deputes and Substitutes,  
and also Messengers at Arms, and all others, Officers and  
Executors of our Laws within *Scotland*, to pass, search for,  
and apprehend the Persons who shall be summoned in  
Manner foresaid, but who shall have failed to have com-  
peared before the said Jury Court, and paid Obedience to  
the Citation given them; and being apprehended, to put  
them in sure Ward, Firmance and Captivity, within their  
Tolbooths, or other Warding Places; keep, hold, and de-  
tain them therein, upon their proper Charges and Expenses,  
ay and while they find sufficient Caution and Surety to  
appear before the said Jury Court, and pay full Obedience  
to the Citation given them, by deponing, exhibiting, and  
producing, in Manner above mentioned.

*Commission for examining Witnesses abroad, or who are  
disabled from attending the Court by Age or permanent  
Infirmity.*

GEORGE THE FOURTH, by the Grace of God, of the  
United Kingdom of *Great Britain* and *Ireland*, King, De-  
fender of the Faith, To

greeting. Know ye, that we, in confidence of your Pru-  
dence and Fidelity, have appointed you, and by these Pre-  
sents do give unto you full Power and Authority to examine

Witnesses for the  
Pursuer in the Issue or Issues directed, in the Cause in  
which \_\_\_\_\_ are Pursuers and

\_\_\_\_\_ are Defenders, to be tried before our Lords  
Commissioners of the Jury Court in Civil Causes in that  
Part of *Great Britain* called *Scotland*: And therefore we  
command you, that on or before the \_\_\_\_\_ Day of  
next ensuing, at a certain Day and Place to be appointed by  
you for that Purpose, you cause the said Witnesses to come

*Forms for Jury  
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efore you, and then and there examine each of them apart, upon the Interrogatories settled and attached to this Commission, on their respective Oaths to be taken before you according to the Form of the Oath indorsed hereupon, and that you reduce such their Examinations to Writing on Paper or Parchment; and when so taken, send the same without Delay to the Lords Commissioners of our Jury Court, at *Edinburgh*, closed up under your Seal,\* together with the said Interrogatories, and this Writ, to be deposited with

Clerk of the Jury Court, in the Office of the Jury Court in the Register House, *Edinburgh*. And we also give you full Power and Authority to administer the Oath de fidei administratione Officii to the Clerk or Clerks employed in writing or engrossing the Depositions of the Witnesses to be examined in virtue of these Presents. Given under the Seal of our Jury Court for the Trial of Civil Causes, at *Edinburgh* the Day of \_\_\_\_\_, in the \_\_\_\_\_ Year of our Reign, 18 .

*Oath to be administered to the Witnesses.*

You swear by God, and as you shall answer to God at the great Day of Judgment, that you will true Answer make to all such Questions as shall be asked you, and that the Evidence which you shall give shall be the Truth, the whole Truth, and nothing but the Truth.

*N.B.*—This Oath to be adapted to the religious Persuasions of the respective Parties taking the same.

*Form of Interrogatories.*

[*N.B.*—These Forms to be adapted to all Questions or Interrogatories, according to their Subject Matter.]

INTERROGATORIES to be administered to \_\_\_\_\_, a Witness to be produced, sworn, and examined, on the part and behalf of \_\_\_\_\_, Pursuer in a certain Cause now depending in \_\_\_\_\_ at \_\_\_\_\_ against \_\_\_\_\_ Defender, before \_\_\_\_\_ of the said Court, pursuant to an Order of the said Court, made on the \_\_\_\_\_ Day of \_\_\_\_\_, in the \_\_\_\_\_ Year of the Reign of King *George* the Fourth.

*Imprimis*, Do you know the Parties, Pursuer and Defender, in the Titles of these Interrogatories named, or

\* Although in this Commission, and in the Commission to examine Havers, the Commissioners are directed to send their Reports *under Seal*, it does not require any Application to the Jury Court to open the said Seals, as that can be done by the Clerk, unless the Court may have specially ordered these Examinations to be sealed up to lie *in retentis*.

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either, and which of them; and how long have you known them? Declare the Truth, and your Knowledge herein.

[*N.B.*—The particular Interrogatories to intervene.]

*Lastly*, That it shall be competent to the Commissioners to put any Question or Questions to the Witness touching the Matter in the Cause, besides what they have been interrogated unto; and to require the Witness to make such Addition and Explanations as he shall think necessary: That it shall be competent to the Commissioner to ask the Witness whether he knows of any other Matter or Thing touching the Matters in Question in the Cause, besides what he has been interrogated unto. If *YEA*, to declare the same fully and at large, as if he had been particularly interrogated thereto.

*Diligence for summoning Havers.*

If an Issue has not been settled, the following to be the Form instead of the Part circumflexed:—Remitted to the Jury Court by Lord

Ordinary.  
A Commission has been granted by the Lords Commissioners of the said Jury Court to

GEORGE THE FOURTH, ETC. To Messengers at Arms, or Sheriffs in that Part, conjunctly and severally, specially constituted, greeting. Forasmuch as in an Action raised before \_\_\_\_\_ at the instance of *A. B.* of \_\_\_\_\_ against *C. D.* of \_\_\_\_\_ a certain Issue (*or* Issues) [were approved of by the Lords Commissioners of the Jury Court in Civil Causes, in pursuance of the Statutes in such Case made and provided, and a Commission granted by the said Lords Commissioners] to \_\_\_\_\_ Esq. to take the Depositions of Havers in the said Cause, to be adduced on the part of the Pursuer (*or* Defender), and to receive the Writings to be produced by them; and which Depositions are to be so taken before the Commissioner at \_\_\_\_\_ on the \_\_\_\_\_ Day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock; at which Time and Place all Havers, who may be lawfully cited by the Parties, are required to attend, in order to be examined upon Oath.

OUR WILL IS HEREOFRE, and we charge you, That ye lawfully summon, warn, and charge, personally, at their respective Dwelling Places, to compare before the said Commissioner, Time and Place foresaid, with Continuation of Days, to answer at the Instance of the said \_\_\_\_\_ : That is to say, to bring with them, exhibit and produce before the said Commissioner upon Oath, all such Writings as they may have in their Hand, Custody, or Keeping, which they may require so to exhibit and produce in Evidence of any of the Matters aforesaid, and at their highest Peril, with Certification as effeirs. According to Justice, as ye will Answer to us thereupon. Which to do, we commit to you, and each of

you, full Power by these our Letters, delivering them by you duly executed and indorsed again to the Bearer. Given under our Signet, at *Edinburgh*, the \_\_\_\_\_ Day of \_\_\_\_\_, in the \_\_\_\_\_ Year of our Reign 18

*Forms for Jury  
Procedure.*

By Order of the Lords Commissioners of the Jury Court in Civil Causes.

*Commission to examine Havers.*

GEORGE THE FOURTH, ETC. To greeting. Know ye, That we, in Confidence of your Prudence and Fidelity, have appointed you, and by these Presents do give unto you full Power and Authority, to examine \_\_\_\_\_ as Havers for the Pursuer (or Defender) in the Issue directed in the Cause, in which *A. B.* is Pursuer, and *C. D.* Defender, which is to be tried before our Lords Commissioners of the Jury Court in Civil Causes, in that Part of *Great Britain* called *Scotland*. And therefore we command you, that on or before the \_\_\_\_\_ you cause the said Havers to come before you, and there receive from them, upon Oath, all such Writings as they may so exhibit, and that you reduce their Examinations to Writing; and when so taken, send the same without Delay to the Lords Commissioners of our Jury Court, at *Edinburgh*, under your Seal,\* to be deposited with \_\_\_\_\_, Clerk of the said Jury Court, in the Office of the Jury Court in the Register House, *Edinburgh*. Given under the Seal of our Jury Court, at *Edinburgh*, the \_\_\_\_\_ Day of \_\_\_\_\_ in the \_\_\_\_\_ Year of our Reign.

*Oath for Costs for not proceeding to the Trial, according to Notice and Order thereon.*

In the Jury Court,

*A. B.* ——— Pursuer,  
and

*C. D.* ——— Defender.

*C. D.* of, etc. the Defender, or *E. F.* the Agent (as the Case may be), swears, that on or about the \_\_\_\_\_ Day of \_\_\_\_\_ last (or instant), Notice was given, etc.

And this Deponent further swears, that the above named Pursuer did not proceed to the Trial of the said Issue (or Issues), nor countermand such Notice, according to the Rules of this Honourable Court.

[*N.B.*—Similar Oaths, *mutatis mutandis*, in case of Notice at the Instance of the Defender, and the Defender not proceeding to Trial.]

\* See Note on p. 511.

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## FORMS OF AFFIDAVITS.

1. *Affidavit in support of a Motion for a Commission to  
examine absent Witnesses.*

In the Jury Court,

A. B. ——— Pursuer.

C. D. ——— Defender.

COMPEARED E. F. Agent for the said Pursuer (or Defender, as the Case may be), who depones, That in this Case certain Issues were, on the \_\_\_\_\_ Day of \_\_\_\_\_

approved of by the Lords Commissioners of this Court, and ordered to be the Issues to try this Cause; and the said Pursuer gave Notice that the said Issues will be tried on the \_\_\_\_\_ Day of \_\_\_\_\_ next, at the next Sittings of the

Jury Court, to be holden in *Edinburgh* (or at the next Circuit, as the Case may be). That G. and H. are material Witnesses in this Cause for the said Pursuer (or Defender); and the Deponent verily believes that his Client cannot safely proceed to Trial without their Evidence: \*That the said Witnesses are at present employed as Sailors on board the Ship \_\_\_\_\_, now lying in the Port of \_\_\_\_\_, but are

about to sail on a Voyage to \_\_\_\_\_, from which they are not likely to return before the Day of Trial: That, in consequence thereof, the Pursuer may be deprived of the Benefit of their Testimony; and the Deponent verily believes that they will not be in this Country, or within the Jurisdiction of this Court, at the said \_\_\_\_\_ Day of \_\_\_\_\_, when the said Trial is to take place. And all this is Truth, etc.

(Signed) E. F.

Sworn before the Court, this }  
Day of \_\_\_\_\_ }  
Eighteen hundred and \_\_\_\_\_ }

Witness residing  
in England, or else-  
where, out of the  
Jurisdiction of the  
Court.

\* That the said G. resides in *England*, out of the Jurisdiction of the Court, and that the Deponent has applied to him to come to this Country to give Evidence at the Trial; but he has declined to do so: That the Deponent, therefore, verily believes that the said G. will not be in this Country at the said \_\_\_\_\_ Day of \_\_\_\_\_ when the Trial is to take place. And all this is Truth, etc.

Witness labour-  
ing under Illness.

\* That the said G. is at present labouring under severe and permanent Illness, which renders him unfit to attend the Trial as a Witness, as will appear from the Certificate of Dr \_\_\_\_\_, herewith produced; and the Deponent therefore believes, that the Pursuer may be deprived of the Testimony of the said Witness, unless the same shall be forthwith taken on Commission. All this is Truth, etc.



**2. Affidavit to be produced at Trial where a Witness has been examined on Commission.**

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\* **COMPEARED** *E. F.* Agent for said Pursuer (or Defender), who depones, that, on the \_\_\_\_\_ Day of \_\_\_\_\_, this Honourable Court granted a Commission to take the Evidence of *G.*, a material Witness for the Pursuer (or Defender) in this Cause, who was then (about to leave this Country on a Voyage), or (residing in *England*, or elsewhere out of the Jurisdiction of the Court), or (labouring under severe Illness): That the said *G.* was, accordingly, examined on the \_\_\_\_\_ Day of \_\_\_\_\_, and a Report of the Commission was made by the Commissioner, and lodged with the Clerk of the Jury Court: That the Deponent has made Inquiries, and is informed, and verily believes, that the said *G.* (is still absent on the said Voyage, and has not been in this Country since the said Commission was granted), or (is still residing without the Jurisdiction of the Court, and has not, since the Date of the said Commission, been within it), or is (still labouring under the same Sickness, or is since dead), and that, therefore, he cannot be present in Court at the Trial of the said Cause, to be examined as a Witness. And all this is Truth, *etc.*

*N.B.*—The preceding Affidavits must be sworn before the Court, if the Person making the Affidavit resides in *Edinburgh*, or in the Circuit Town, or within Miles thereof. But if they are to be sworn by the Party, or any Person residing beyond that Distance, they may be taken before a Justice of Peace, or any Judge Ordinary; in which Case the following Alteration will be made:—

In the Cause,

*A. B.* ——— Pursuer.

*C. D.* ——— Defender.

In the presence of \_\_\_\_\_ One of his Majesty's Justices of Peace for the County of \_\_\_\_\_

Compeared *E. F.*, who depones, *etc.*

*Oath for Costs for not proceeding to the Trial, according to Notice and Order thereon.*

In the Jury Court,

*A. B.* ——— Pursuer,

and

*C. D.* ——— Defender.

*C. D.* of, *etc.* the Defender, or *E. F.* the Agent (as the Case may be), swears, That, on or about the \_\_\_\_\_ Day of \_\_\_\_\_ last (or instant), Notice was given, *etc.* And this Deponent further swears, that the above named Pursuer

*Forms for Jury  
Procedure.*

did not proceed to the Trial of the said Issue (*or Issues*), nor countermand such Notice in due Time, according to the Rules of this Honourable Court.

[*N.B.*—Similar Oath, *mutatis mutandis*, in case of Notice by *proviso*, at the Instance of the Defender, and the Defender not proceeding to Trial.]

*Form of a Bill of Exceptions as to the Effect of Evidence.*

And whereas afterwards, to wit, at a Sitting of the Jury Court in Civil Causes, holden, *etc.* at, *etc.* before, *etc.* the aforesaid Issue (*or Issues*) came on to be tried by a Jury of the County (*or City*). At which Day came there, as well the said Pursuer, as the said Defender, by their respective Agents, and the Jurors of the Jury aforesaid, impannelled to try the said Issue (*or Issues*) being called, also came, and were then and there, in due Manner, chosen and sworn to try the same Issue (*or Issues*); and at the Trial of that Issue (*or those Issues*), the Counsel learned in the Law for the said Pursuer, to maintain and prove the said Issue (*or Issues*) on his part, gave in Evidence that, *etc.* [Here set out the Evidence on the part of the Pursuer, and afterwards on the part of the Defender, and then proceed as follows]: Whereupon the said Counsel for the said Defender did then and there insist before the said Lords Commissioners (*or Lord Commissioner*), on behalf of the said Defender, *that the said several Matters, as produced and given in Evidence on the part of the said Defender, as aforesaid, were sufficient, and ought to be admitted and allowed, as decisive Evidence to entitle the said Defender to a Verdict*; [This to be varied according to the Nature of the Exception,] and to bar the said Pursuer of his Action aforesaid; and the said Counsel for the said Defender did then and there pray the said Lords Commissioners (*or Lord Commissioner*) to admit and allow the said Matters so produced and given in Evidence for the said Defender, to be conclusive Evidence in favour of the said Defender, to entitle him to a Verdict in this Cause, and to bar the said Pursuer of his Action aforesaid. But to this the Counsel learned in the Law of the said Pursuer did then and there object and insist before the said Lords Commissioners (*or Lord Commissioner*), that the same was not sufficient, nor ought to be admitted or allowed, to entitle the said Defender to a Verdict, or to bar the said Pursuer of his Action aforesaid: And the said Lords Commissioners (*or Lord Commissioner*) did then and there declare and deliver their (*or his*) Opinion to the Jury aforesaid, that the said several Matters so produced, and given in Evidence on the part of the said Defender, were not sufficient to bar the said Pursuer of his Action aforesaid; and with that Direction left the same to the said Jury; and

the Jury aforesaid then and there gave their Verdict for the said Pursuer, (and if a Case for Damages) L.

Damages. Whereupon the said Counsel for the said Defender did then and there, on the behalf of the said Defender, except to the aforesaid Opinion of the said Lords Commissioners (*or* Lord Commissioner), and insisted on the said several Matters, as an absolute Bar to the said Action. And inasmuch as the said several Matters so produced and given in Evidence on the part of the said Defender, and by his Counsel aforesaid, objected and insisted on as a Bar to the Action aforesaid, do not appear by the Verdict aforesaid, the said Counsel for the said Defender did then and there propose their aforesaid Exception to the Opinion of the said Lords Commissioners (*or* Lord Commissioner), and requested them (*or* him) to sign the said Bill of Exceptions, containing the several Matters so produced, and given in Evidence on the part of the said Defender, as aforesaid, according to the Form of the Statute in such Case made and provided; and thereupon the said Lords Commissioners (*or* Lord Commissioner), at the Request of the said Counsel for the said Defender, did respectively sign this Bill of Exceptions, pursuant to the aforesaid Statute in such Case made and provided, on the said Day of , in the Year of the Reign of his present Majesty.

*Mutatis mutandis*, where the Exception is by the Pursuer, and also, where the Bill is on the account of the Admissibility of Evidence, or of a Question to a Witness, or of the Admissibility of a Witness, or an Objection to any Point of Law ruled by the Court.

And the Lords appoint these Practical Forms also to be engrossed in the Books of Sederunt of the Court of Session and Jury Court, and to be printed and published in the usual Manner.

C. HOPE, *I.P.D.*

*Teind Court.  
Discretionary  
Procedure.*

*Act of Sederunt relative to the Form of Process in the Teind Court.*—[*Edinburgh*, 12th November 1825.] [See A. of S. 20 June 1838.]

THE Lords of Council and Session taking into their Consideration an Act of Parliament passed in the Sixth Year of the Reign of his present Majesty, intituled, "An Act for the better regulating of the Forms of Process in the Courts of Law in *Scotland*;" by which Act they are required, *inter alia*, to make such Orders and Regulations concerning the Forms of Process in the Court of the Lords Commissioners or Plantation of Kirks and Valuation of Teinds, as may

Recital.

Teind Court.

most effectually carry into Execution the Purposes of the said Act; and considering further that the said Act, Section 54, distinguishes between those Actions carried on before the Lords Commissioners for Plantation of Kirks and Valuation of Teinds, in which the Proceedings are of a judicial Nature, and those in which the Proceedings are ministerial and discretionary; and that with regard to Cases of the first Description, and those which are specially enumerated in the Act, it is provided, "that all such Causes shall be proceeded in as nearly as possible according to the Forms prescribed by this Act for the Preparation of Causes in the Court of Session:"

It is therefore enacted and declared,

Form of Summons.

I. *1mo*, That no Summons shall hereafter be issued Blank, but shall be fully libelled before it passes the Signet. *2do*, That all Teind Summonses, of the Description of those mentioned in the first Part of the Clause in the Act of Parliament above referred to, shall be upon the same induciæ, and the same Dijets of Compearance, and shall be executed against the Defender or Defenders within Scotland, or out of the Kingdom, and shall be brought into Court, and called in the same Way as ordinary Actions in the Court of Session.

Will of Summons.

II. The Will of the Summons shall, as at present, charge the Messenger to summon the Defender to compear before the said Lords of our Council and Session, Commissioners appointed for Plantation of Kirks and Valuation of Teinds, etc., etc.

Enrolment of Cause.

III. After the Summons is called, it shall be competent to the Pursuer forthwith to enrol it before the junior Lord Ordinary, for One or other of the Divisions of the Court of Session, at the Option of the Pursuer.

Certain Averments required in Processes of Valuation.

IV. In Processes of Valuation of Teinds, the Summons shall distinctly set forth the Rent of the Lands according to the current Leases, when they are under Lease; and when they are not under Lease, the Rent shall be stated, which, it is averred, they would bring if let on a Lease for Nineteen Years, if arable; Eleven Years, if pasture Lands; or Nineteen Years, if partly both, with the usual and customary Clauses. If the Pursuer means to claim Deductions on account of recent Improvements, the Amount of such Deductions shall be distinctly stated; and the Evidence on which the Claim rests, in so far as it is founded on Documents in the Pursuer's Possession, shall be produced. This shall be applied, *mutatis mutandis*, when the Titular or Minister is the Pursuer.

Form of Defences.

V. Defences shall be given in by all the Defenders; either separate Defences or joint Defences, as they may see Cause; and these Defences must contain every Defence, both dila-

tory and peremptory, on which the Defenders mean to rely, and must meet the Statement of Facts and Conclusions contained in the Summons, and must either admit or deny the Averments in point of Fact, and the Conclusions in point of Law, as stated in the Summons. The dilatory Defences must be disposed of in the Manner stated in the 5th Section of the Act of Parliament above mentioned; and the Record shall be completed in the Manner provided in the 7th Section of said Act.

*Teind Court.*

How to be disposed of.

VI. As the Facts with regard to Processes of Valuation are so few and simple, it may very seldom be necessary to go farther than the Summons and Defences, to see wherein the Parties truly differ; and where a Proof is necessary, a Proof of the Facts, as stated in the Summons and Defences, may be sufficient to answer all the Ends of Justice, without ordering Condescendences and revised Condescendences, in the Manner required in the Statute in ordinary Actions in the Court of Session; nevertheless Power is hereby reserved to the Lord Ordinary, if he shall see Cause, to proceed in the Manner pointed out in the Sections 8, 9, 10, and 12, of the Statute.

In Valuations, Record to be completed on Summons and Defences.

VII. With regard to Pleas in point of Law, it is enacted and declared, that they shall be disposed of in the Manner pointed out in the 11th Section of the Statute.

Pleas in Law.

VIII. When a Proof is necessary, the same shall be taken by Commission, as at present.

Proof, how to be taken.

IX. When a Proof is taken and reported, a State and Scheme shall be made up, as at present, by the Teind Clerk, and reported to the Lord Ordinary, who thereupon shall order Parties to be heard upon the whole Matters in dispute, or such Part thereof as he may think proper, and he shall either proceed to decide the Cause, or order Cases, and give Judgment; and in both Cases his Judgment shall be final, or he may take it to report on Cases to that Division to which the Cause belongs.

After Scheme made up, Lord Ordinary to hear Parties.

X. When the Ordinary pronounces a Judgment, it may be brought under Review of the Division by the Party who is dissatisfied, by printing and boxing a Note, within Twenty-one Days from the Date of the Interlocutor, reciting the same, and praying the Court to alter it in whole or in part; and if the Interlocutor shall have been pronounced on Cases, the Cases must be printed and boxed along with the Note; and Notice of Application for Review must be given by Delivery of Six Copies of the Note to the known Agent of the opposite Party.

Review of Lord Ordinary's Interlocutor.

XI. Decrees in absence shall be dealt with as in the Court of Session.

Decrees in absence.

XII. With regard to Localities, it is provided by the

Recital.

*Teind Court.*

Act, "that all Actions in relation to the localling of modified or augmented Stipends among Heritors, and other Causes which may be remitted by the said Lords Commissioners to a Lord Ordinary, shall thereafter be conducted, as nearly as may be, according to the Forms prescribed for Causes before the Court of Session."

Existing Procedure in Localities continued in force.

But as from the peculiar Nature of a Process of Locality, it is impossible to conduct it precisely in the Mode which is directed by the Act as to Civil Processes in the Court of Session, it is therefore enacted and declared, that the present Form of Proceeding shall be continued, subject to the following Alterations.

Common Agent.

XIII. That no Person who is Agent for the Minister or Titular, or for any Heritor in the Parish, shall be appointed common Agent.

Procedure in preparing Scheme of Locality.

XIV. That interim Schemes of Locality shall be prepared, when necessary, and approved of, as at present, according to the Regulations in the Act of Sederunt 1809, which are hereby confirmed: That as soon as Proceedings with regard to the interim Locality are concluded, a Scheme of a final Locality shall be forthwith prepared, and the common Agent shall distribute Copies of this State and Scheme among the Agents for the Heritors, as soon as may be after such State and Scheme are prepared; and no new Production shall thereafter be received, except upon Payment of such Expenses as may be occasioned by such new Production, to be modified by the Lord Ordinary.

Objections to Scheme may be given in

XV. After the foresaid State and Scheme shall have been distributed amongst the Heritors, the Lord Ordinary shall ordain Objections thereto to be given in by any of the Heritors who think themselves aggrieved by the proposed Mode of Allocation; and the Lord Ordinary may either hear Parties viva voce upon such Objections, and the Answers that may be made thereto, at the Bar; or he may, if he shall see Cause, allow all concerned to give in written Answers to such Objections within such Time as he shall think proper to appoint, and shall thereafter proceed, in so far as regards any Application for prorogating the Time for giving in Papers, in the Manner directed by Section 12 of the Statute.

Reclaiming Note may be lodged within Twenty-one Days.

XVI. When the Lord Ordinary has pronounced a Judgment, he shall have no Power of reviewing it, but it may be reviewed by the Division to which the Cause belongs, by giving in a Note, which must be lodged within Twenty-one Days after the Date of the Judgment complained of, and the Procedure on that Note shall be the same as in reviewing Judgments of the Lord Ordinary in the Court of Session.

XVII. With regard to Processes of Reduction of Localities, of Approbation of Reports of Sub-commissioners, of

Prorogation of Tacks of Teinds, the same Form of Proceeding shall be adopted as in Processes in the Court of Session, except that as the Objects of such Processes are extremely limited, and the media concludendi also quite limited and notorious, it does not seem to be necessary to require that the same Strictness of Proceeding should be followed out as in ordinary Actions in the Court of Session. But in Processes of *Approbation*, if the Defender shall maintain that the Benefit of the Sub-report has been lost by Dereliction, the Defence shall distinctly set forth the Nature of that Plea, and the Circumstances on which it is founded.

*Teind Court.*

Procedure in Processes of Reduction, Approbation, and Prorogation.

XVIII. Actions of Proving the Tenor may be brought in either Division of the Court of Session, as a Quorum of Commissioners for Plantation of Kirks and Valuation of Teinds, and shall be prepared and determined as in the Court of Session; and the Summons in such Process shall distinctly libel and set forth the Nature, Form, and Contents of that Deed or Writing, the Tenor of which is to be proved; the Adminicles also shall be libelled and distinctly set forth; and the *casus amissionis* shall be stated.

Form of Actions of Proving the Tenor.

XIX. With regard to Actions in which the Jurisdiction of the Court of Teinds is of a *ministerial* or *discretionary Nature*, it is provided by the Act, "That the Procedure shall nowise be altered or affected by this Act, but the same shall continue to be exercised by the whole Lords Commissioners for Plantation of Kirks and Valuation of Teinds, or Quorum thereof, in the same Way and Manner as heretofore.

*Actions of a ministerial Nature.*  
Recital.

But it is hereby enacted and declared, That from and after this Date, in every Process of *Suppression* and *Annexation*, and of *Disjunction* and *new Erection*, and every Process where a new Arrangement of the Lands in One or more Parishes is proposed, the Summons shall be fully libelled before it passes the Signet; and shall distinctly set forth all the Facts and Circumstances which are founded on as leading to the Conclusion stated in the Summons; such as the Extent of the Parish or Parishes, Number of Inhabitants, Contiguity to existing Church, or that proposed to be erected; the State of the Teinds, Provision to be made for the Minister of the new-erected Parish, where there is to be a Disjunction and new Erection, or for the Minister of the suppressed Parish, where there is to be a Suppression and Annexation, Manner of disposing of the Manse, Glebe and Garden, Schoolmaster's Salary, and Schoolhouse and Garden, Poor's Fund, and the like.

Form of Actions of Suppression and Annexation, and of Disjunction and Erection.

XX. The Defences shall state every Defence, dilatory and peremptory, and shall also either admit or deny the Facts founded upon, all in Terms of the Second Section of the Act of Parliament.

Form of Defences.

*Teind Court.*

Defence of Want  
of requisite Consent  
must be pleaded.

Completion of  
Record in such  
Cases.

Proof.

Existing Practice  
as to Citation in  
Modifications  
continued.

Duty of Pursuer.

Judgment pro-  
nounced after  
hearing Parties to  
be final, etc.

XXI. By the Act 1707, Cap. 9, the Consent of Heritors possessing Lands in the Parish, of Three-fourths of the Valuation of the Parish, is requisite in Processes for transporting Kirks, disjoining too large Parishes, and building new Kirks. If any dilatory Defence is founded upon the Want of such Consent, it must be explicitly stated and discussed in the Manner provided for in the Act as to dilatory Defences.

XXII. If it shall appear, upon considering the Summons and Defences, that the Parties differ so widely in Matter of Fact that a Proof will be necessary, the Case shall be remitted to the junior Ordinary, in order that the Record may be completed, and Condescendences and Answers ordered, and the Cause prepared for being sent to Proof, in the Manner prescribed by the Act in ordinary Actions in the Court of Session; but that the Proof must be taken by Act and Commission, according to the Practice hitherto used.

XXIII. With regard to Processes of Modification, it is enacted and declared, That the Act of Sederunt of 5th July 1809, as to the Mode of Citation and the induciæ in such Summonses, shall be retained, and also that the 2d Section of the same Act of Sederunt, in so far as regards the Pursuer giving in a Note of the Amount of his Stipend, shall remain without Alteration. The Pursuer shall also give in a Rental of the Parish, distinguishing the Rent of each Heritor as exactly as he can. He shall also state, as accurately as he can, in the Summons, the Number of Inhabitants, the precise Extent of the Parish, and other Circumstances on which he founds in support of his Claim.

XXIV. The Cause shall then be prepared for Decision as at present, according to the Provisions in Sections 3 and 4 of the Act of Sederunt above mentioned; and when Parties have been heard *viva voce*, the Court shall then proceed to give Judgment and pronounce Decree of Modification, unless they shall see Cause to require further Information; as to which, they may either hear Parties *viva voce*, or proceed in such other Way as they shall think fit; and when a Decree of Modification has been pronounced, it shall be final, and not subject to Review by Petition or otherwise. But when Decree of Modification has been pronounced in absence, the Defender may give in a Note praying to be heard, and the Court may thereon either hear Parties, or proceed in such other Way as they shall think fit, on Payment of Expenses. When Decree of Modification is pronounced, the Court, at the same time, shall remit the Cause to the junior Lord Ordinary, to be marked for either Division, at the Choice of the Pursuer, in order that he may prepare a Locality.

XXV. And it is further enacted and declared, That all



Summonses of Wakening shall be executed in the Manner prescribed by the Act of Sederunt 1808, whether the original Summons was executed before or after the Date of that Act.

*Teind Court.  
Judicial Procedure.*

Summonses of  
Wakening.

Minute Book to  
be kept by Teind  
Clerk.

XXVI. And whereas it is now especially necessary, that Parties concerned should be certiorated of the Proceedings before the Lord Ordinary, it is enacted and declared, that a Minute Book of such Proceedings shall be kept by the Teind Clerk, who shall procure the same to be printed and published Once a Week, and on such a Day as the Lord Ordinary shall direct; the Fees to the Clerk, for his Trouble and Expense in relation to which, shall be the same as are at present paid to the Clerks and Keeper of the Minute Book of the Court of Session in similar Cases.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and printed and published in the usual Manner.

(Signed) C. HOPE, *I.P.D.*

*Act of Sederunt of the Teind Court.*—[*Edinburgh, 24th  
November 1825.*]

[See 1 & 2 V., c.  
118, § 2.]

THE Lords of Council and Session, Commissioners for the Plantation of Kirks and Valuation of Teinds, in order to follow out the Provisions of the Act 6 Geo. IV., c. 120, as to Processes at present before them, do farther enact and declare,

I. That, in all Processes brought before the Commission of Teinds prior to the 12th Day of *November* current, which are not of a ministerial or discretionary Nature, and which have been remitted to a Lord Ordinary in the Outer House for Preparation in order to report, the Lord Ordinary shall have Power to determine the Cause in the Outer House, or to report the same on Cases to One of the Divisions of the Court, as a Quorum of the Commissioners, in the same Manner as is competent to the Lord Ordinary in the Outer House in Causes before the Court of Session; and at the first Enrolment of such Cause before the Lord Ordinary subsequent to this Date, the Pursuer shall be called upon to declare to which Division of the Court the said Cause shall belong.

Certain Processes  
to be determined  
in Outer House,  
etc.

II. That the junior Lord Ordinary, who is to hear Teind Causes, shall attend weekly for that Purpose, in the Outer House, on *Thursday*, at Nine o'clock in the Morning, and that the Roll of such Causes shall be taken up by the Teind

Lord Ordinary in  
Teind Causes.

Consolidation Act.

Intimation to be given of Enrolments.

Clerk on the *Monday* preceding, and printed not later than *Tuesday*.

III. Intimation to the Parties interested shall be given, of the Purpose of every Enrolment after the first one, 48 Hours previous to the Motion being made, whenever it is directed against not more than Two Parties interested in the Matter of the Motion in the Process.

And the Lords appoint this Act to be inserted in the Books of Sederunt of the Court of Session, and also in the Sederunt Book of the Teind Court, and printed and published in the usual Manner.

C. HOPE, *I.P.D.*

[Fees regulated by 7 July 1858. Borrowing Processes by 7 July 1858; See Act of Reg. 1695. (Al. Abr. App. 129.)]

*Act of Sederunt for repealing certain Acts of Sederunt, of Date the 12th Day of November 1825, and subsequent Dates, passed for regulating the Forms of Process in the Court of Session, in pursuance of the Statute 6 Geo. IV., c. 120; for consolidating the Enactments contained in said Acts; and also for further improving the Forms in said Court.*—[Edinburgh, 11th July 1828.]

## Preamble.

THE Lords of Council and Session, and the Lord Chief Commissioner of the Jury Court, taking into Consideration that, by an Act passed in the 6th Year of his present Majesty, c. 120, intituled, "An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland," they are empowered and required to make such Orders and Regulations, concerning the Forms of Process in the Court of Session, and such Arrangements in respect to Attendance and Hours of doing Business, as may most effectually carry into Execution the Purposes of said Act; by which, likewise, it is provided, that they may alter or amend such Regulations from Time to Time: That, in pursuance of the Powers conferred upon them, they have passed a Variety of Acts of Sederunt, for the Purpose aforesaid, which it is expedient to consolidate into One general Act; and that it is necessary, also, to amend some of the Enactments contained in said Acts, as well as to make certain new and additional Regulations for still farther improving the Forms of Proceeding in said Court, do hereby enact and declare, That the several Acts of Sederunt before referred to, viz., 1st, An Act "Relative to the Form of Process in the Inner House, Outer House, and Bill Chamber," passed on the 12th Day of November 1825; 2d, An Act "Relative to the Forms of Edictal Citations against Persons

Recital of Acts to be consolidated.

further of *Scotland*," passed on the 8th Day of *December* 1825; 3d, An Act "Respecting Expenses to be paid by Persons on the Poor's Roll before being reponed against a Decree in absence," passed on the 23d Day of *December* 1825; 4th, A "Supplementary Act" to the said first mentioned Act, passed on the 14th Day of *February* 1826; 5th, An Act "Relative to Reclaiming Notes;" 6th, An Act "Anent juratory Caution in Advocations;" 7th, An Act "As to calling Summonses," etc.; 8th, An Act "Regarding ingiving of Papers," all passed on the 11th Day of *July* 1826; 9th, An Act "For regulating the Business of the Outer House," passed on the 15th Day of *December* 1826; 10th, An Act "Relative to the Furnishing the Lords Ordinary with a Copy of the Closed Record," passed on the 16th Day of *January* 1827; and, 11th, An Act "For printing Bills and Answers as an Appendix to Reclaiming Notes,"—shall, from and after the 11th Day of *November* next, be, and the same are hereby, repealed; and, in lieu and place thereof, it is enacted and declared as follows:—

*Bill Chamber.*

Repeal thereof.

#### I. FORM OF PROCESS IN THE BILL CHAMBER, AND PROCEEDINGS ON BILLS OF ADVOCATION AND SUSPENSION.

*Bill Chamber.*

I. Whereas Doubts have been entertained as to the Meaning of the Term, "final Judgment," used in the Act passed in the 50th Year of his late Majesty, with reference to Advocation, it is declared, That a Judgment shall be reckoned a final one, to the effect of admitting Advocation, where the whole Merits of the Cause have been disposed of, although no Decision has been given as to Expenses, or, if Expenses have been found due, although they have not been modified or decerned for.

What a final Judgment to the effect of Advocation.

II. Whereas, in Section 41st of the said Act, 6 *Geo.* IV., c. 120, it is enacted, That Bills of Advocation, complaining of final Judgments, shall be passed on Caution for the Expenses incurred in the Inferior Court, and also for such Expenses as may be incurred in the Court of Session, but the Bond of Caution required in Section 43d refers to the Expenses in the latter Court only, it is enacted and declared, That the Bond of Caution to be lodged with the Clerk of the Inferior Court shall be in Terms of the 41st Section, and include the Expenses in both Courts; and also, that no additional Bond shall be required in the Court of Session.

Bond of Caution in Advocation.

Form of Bond of Caution.

III. And whereas it is further enacted by Section 41st of

*Bill Chamber.*

Juratory Caution  
in Advocations.

Application to be  
made in Inferior  
Court.

Procedure before  
Application is  
granted.

Bond, Inventory,  
and Enactment to  
be lodged with the  
Clerk in Inferior  
Court;

also Vouchers and  
Title Deeds.

Disposition of  
heritable Pro-  
perty to be  
granted.

said Statute, That Bills of Advocation, complaining of final Judgments, may be passed at once on juratory Caution, "for Expenses in Cases where such Caution is, by the present Practice, held sufficient;" and further, by the 44<sup>th</sup> Section, the Bond of Caution for Expenses is to be lodged in the Inferior Court, whose Judgment is to be advocated; but no Provision has been made, appointing the Manner in which such juratory Caution is to be offered, or the Conditions upon which it may be received, it is enacted and declared, That where a Person wishes to bring under Review of the Court of Session any final Judgment of a Sheriff, or other inferior Judge, upon finding juratory Caution only for Expenses, he shall apply, by Petition, to the Judge of the Inferior Court, praying that such Caution may be received, which Application shall be intimated to the opposite Party or his Agent; and, That before any such Application shall be granted, the Complainer shall be required to depone, at a Time and Place to be previously intimated to the opposite Party, or his Agent, in order that they may have an Opportunity of cross-interrogating him, if they see fit, whether he have any Lands in Property or Liferent, or Bonds, Bills, or Contracts containing Sums of Money; and, in case he acknowledge the same, he shall condescend thereon, and depone that he has no other Lands, Bonds, Bills, or Contracts containing Sums of Money belonging to him: That the Complainer shall also lodge with the Clerk of the Inferior Court, 1<sup>st</sup>, The Bond of Caution; 2<sup>dly</sup>, A full Inventory of his Subjects and Effects of every Kind: 3<sup>dly</sup>, An Enactment subjoined to the Inventory, bearing that he will not dilapidate any of his Property, and that he will not dispose of the same, or uplift any of the Debts due to him, without Consent of the Respondent or his Agent, or the Authority of the Judge (under Pain of Imprisonment, or being otherwise punished as being guilty of Fraud), till the Advocation be discussed, and till there be an Opportunity of doing Diligence for any Expenses that may ultimately be found due by him: And further, the Complainer shall lodge in the Hands of the said Clerk the Vouchers of any Debts due to him, and the Title Deeds of any heritable Subject belonging to him, so far as the same be in his Possession or within his Power; and the Complainer also shall grant a special Disposition to the Respondent (if so required) of any heritable Subject he may be possessed of, and an Assignation of all Debts, or other Rights, due to him, for the Respondent's further Security; the said Disposition and Assignation to be made out at the Expense of the Respondent, and by his Agent, and the same with the said Vouchers and Title Deeds, if so deposited, to remain in the Hands of

the said Clerk, subject to the Directions of the Court, till the Advocation be discussed; and upon all this being done to the Satisfaction of the Judge, he shall grant Leave to advocate on juratory Caution, and the Clerk of the Inferior Court shall certify the same: And in case of a Bill of Advocation which does not pass de plano, or a Bill of Suspension being presented on juratory Caution, the Lord Ordinary shall, when he appoints the Bill to be answered, name a Commissioner to take the Complainer's Deposition; and the Complainer shall intimate to the opposite Party, or his Agent, to attend at the Time and Place fixed by the Commissioner, in the same Manner as hereinbefore provided for in Cases of ordinary Bills of Advocation; and the Lodgment shall be made with the Clerk of the Bills, till which Time it shall not be necessary for the opposite Party to give in his Answers.

IV. Whereas it is enacted by Section 45th, That when Bills of Advocation against interlocutory Judgments are passed in Terms of the Act of the 50th Year of his late Majesty, Caution for Expenses only shall be necessary, it is enacted and declared, That this does not derogate from the Power granted by Section 39th of the last mentioned Act, of passing Bills of Advocation, on the Ground of Incompetency or Contingency without Caution.

V. Whereas it is enacted by Section 40th, That in all Cases originating in the Inferior Courts, in which the Claim is in Amount above L.40, as soon as an Order or Interlocutor allowing a Proof shall be pronounced (unless it be an Interlocutor allowing a Proof to lie in retentis, or granting Diligence for the Recovery and Production of Papers), it shall be competent to advocate such Cause to the Court of Session, it is enacted and declared, That if in such Causes the Claim shall not be simply pecuniary, so that it cannot appear on the Face of the Bill that it is above L.40 in Amount, the Party intending to advocate shall previously apply, by Petition, to the Judge in the Inferior Court, for Leave to that Effect, which Application shall be intimated to the opposite Party, or his Agent; and the Petitioner shall be bound, if required by the Judge, to give his solemn Declaration, that the Claim is of the true Value of L.40 and upwards; and on such Petition being presented, and on such Declaration, if required, being made to the Satisfaction of the Judge, Leave shall be granted to advocate, and the Clerk of the Inferior Court shall certify the same; and it is farther enacted and declared, That if, in either Class of Causes, neither Party, within Fifteen Days in the ordinary Case, and in Causes before the Courts of *Orkney* and *Shet-*

*Bill Chamber.*

In Bills of Suspension, etc., the Lodgment, etc., to be made with the Clerk to the Bills.

Commission to be granted.

Bills of Advocation or Incompetency or Contingency, may still be passed without Caution.

Proof may proceed in Inferior Court, unless Advocation in order to Jury Trial be intimated within limited Time.

Petition and Declaration as to Value.

Advocation in order to Jury Trial.

Bill Chamber.

*land*, within Thirty Days after the Date of such Interlocutor allowing a Proof, shall intimate, in the Inferior Court, the passing of a Bill of Advocation,—such Proof may immediately thereafter effectually proceed in the Inferior Court, unless reasonable Evidence shall be produced to the Inferior Judge that a Bill of Advocation has been presented, or the Judge be satisfied that effectual Measures have been taken for presenting it; in which Case the Inferior Judge shall prorogate the Time for taking the Proof for a reasonable Time, not less than Seven Days after that fixed for the First Diet of Proof, in the ordinary Case, and not less than Twenty Days in Cases from *Orkney* and *Shetland*; and if, within these Periods respectively, no Intimation shall be made of any such Bill of Advocation, the Proof shall then proceed; and the Bill, if such have been presented, together with the passing thereof, shall be held to fall, as if such Bill had never been presented.

Form of Bill of  
Advocation for  
Jury Trial.

VI. And whereas the Form of the Bill of Advocation, referred to in the said 40th Section, has not been regulated, which it is expedient should be done, it is ENACTED and DECLARED, That such Bills shall be in the same Form as is prescribed in the Case of Advocation complaining of a final Judgment, and shall also refer to the Provision in the Statute on which the Application is founded; and, finally, shall set forth, that the Party is desirous to avail himself of the same, and therefore praying for Letters of Advocation accordingly. And it is farther enacted and declared, That the Clerks of the Bill Chamber shall not give out the passed Bill for the purpose of expediting the Letters, until a Certificate of the Intimation thereof, both to the Clerk of the Inferior Court, and to the Agent of the opposite Party there, shall be produced.

Passed Bill not to  
be given out till  
after Intimation.

Lord Ordinary  
refusing Bill of  
Suspension to  
specify Facts  
established by  
Proof, etc.

VII. And whereas, by the 40th Section, it is enacted, That when, in any Inferior Court, a Proof shall be allowed and taken, according to the present Practice, the Court of Session shall, on reviewing the Judgment proceeding on such Proof, distinctly specify in their Interlocutor the several Facts material to the Case, which they find to be established by the Proof, and express how far their Judgment proceeds on the Matter of Fact so found, or on Matter of Law, and the several Points of Law which they mean to decide, it is ENACTED and DECLARED, That this shall apply also to the Lord Ordinary on the Bills, when he advises and refuses a Bill of Suspension of a Judgment of an Inferior Court, proceeding on a Proof so taken.

Inferior Court  
Expenses to Sus-  
penders not to be  
awarded in Bill  
Chamber.

VIII. And whereas it is declared, in Section 46th of the Act, That in the event of Bills of Suspension being passed

**f** Decrees of Inferior Courts, it shall be competent for the Lord Ordinary or the Court to find the Suspenders entitled to his Expenses in the Inferior Court, it is enacted and declared, That this Power is not to be exercised in the Bill Chamber, but only by the Lord Ordinary in the Outer House, or by the Court, after the Letters have been expedited, or after Authority has been obtained to discuss the Reasons in the Bill.

*Bill Chamber.*

**IX.** That in all Cases in which the Lord Ordinary on the Bills shall think it expedient, before passing or refusing a Bill, to which it is competent to appoint Answers to be made, to order Production in the Bill Chamber of the Proceedings in the Inferior Court, brought under his Review, it shall be incumbent on the Complainer to lodge the same, with the Inventory thereof, in the Hands of the Clerk to the Bills, within such Time as the Lord Ordinary may think reasonable, and which may, on Cause shown, be prorogated; and, failing such Production, the Bill shall be refused, and Expenses found due.

Complainer may be ordered to produce Inferior Court Process in the Bill Chamber.

If not produced, Bill may be refused.

**X.** That on Production to the Clerk of any Inferior Court of a Copy, duly certified by the Clerk of the Bills, of an Interlocutor of the Lord Ordinary on the Bills, either passing a Bill of Suspension or Advocation, complaining of a Judgment of such Court, or ordering the Process before such Court to be produced in the Bill Chamber, such Clerk shall be bound, upon Satisfaction of his legal Fees, to deliver the whole Steps of Process, so far as in his Hands, all conform to Inventory, to the Complainer's Agent practising before such Court, on his Receipt and Obligation for Redelivery thereof, so soon as the Matters at issue shall be finally disposed of in the Court of Session, in case of the Bill being passed, or in the Bill Chamber, if the Bill shall, by a final Interlocutor, be refused; and the said Clerk shall, previously to such Delivery, if required, take the usual summary Measures for compelling the Restoration to his Hands of any Parts of the Process which may have been borrowed, provided that the Complainer shall not be entitled to require with the Process the Writs produced by the Respondent, unless by his Consent.

Warrant for Delivery of Inferior Court Processes to the Complainer's Agent in Suspensions or Advocations, in order to Production in Court of Session.

**XI.** That the Clerk of the Bills shall not give up to the Complainer the principal Bill, either for carrying to the Lord Ordinary, or thereafter, for Intimation; but that the Clerk, or One of his Deputes, shall, in all Cases, attend the Lord Ordinary with the Bill, when it is to be advised.

Principal Bill not to be lent up to Complainer.

**XII.** That the Time allowed for answering a Bill, when presented without Caution, shall, in no Instance, begin to run till the Date of Intimation of the Order, and if the Bill

How Time for Answers shall be reckoned.

*Bill Chamber.*

If Caution not duly found, Bill may be refused.

Entry in Minute Book of Bill Chamber regulated.

Effect of issuing a Certificate of a refused Bill, and of Delivery of a passed Bill.

Issue of Certificate, etc., may be prohibited, and Time prolonged.

Modes of Review of Bill Chamber Interlocutors.

Within what Time a Reclaiming Note must be lodged.

If not prohibited, Clerk to the Bills may issue Certificate, etc.

be offered on Caution, and Caution shall not have been received by the Clerk at said Date, then from the Date when Caution shall be received; provided that, according to the present Practice, the Bill may be refused, if Caution shall not be found within Fourteen Days.

XIII. That the Clerk of the Bills shall not, until the Lapse of Forty-eight Hours after Entry in the Minute Book of an Interlocutor passing or refusing any Bill, deliver up a passed Bill to the Complainer, in order to the expediting of the Letters, or grant to the Respondent a Certificate of the Refusal of a Bill; and no Entry shall on any Day be made in the Minute Book after One o'clock Afternoon.

XIV. That Interlocutors passing or refusing Bills shall take effect as soon as the Clerk of the Bills shall have delivered up the passed Bill, in order to the expediting of the Letters, or duly issued a Certificate of the Refusal of the Bill; but the Lord Ordinary on the Bills may, either by the Interlocutor itself, or subsequently, on Cause shown by a Note for the Party, prohibit the Delivery of the Bill, or Issue of the Certificate, during such Time as he may judge reasonable for enabling the Party to obtain a Review of the Interlocutor.

XV. That the Modes of Review applicable to Interlocutors in the Bill Chamber shall be as follows, viz.: 1. Interlocutors entered in the Minute Book during the last Ten Days of either Vacation, or of the Christmas Recess, or in Session Time, except during the last Four Sederunt Days of each Session, by a Reclaiming Note to the Court; 2. Interlocutors entered in the Minute Book during the last Four Sederunt Days of each Session, or during Vacation or Christmas Recess, excepting the last Ten Days of each Vacation and Recess, if the same be Interlocutors passing any Bill, by a Reclaiming Note to the Court; and if the same be Interlocutors refusing a Bill, by presenting a Second Bill to the next succeeding Ordinary on the Bills; and in case such Second Bill shall also be refused, by a Reclaiming Note to the Court within Fourteen Days from the Date of the Interlocutor reclaimed against: Provided always, that all Reclaiming Notes in such Cases shall be intimated to the opposite Party; and in Time of Session be duly marked and boxed within the said Fourteen Days; and in Vacation or Recess that the same are duly marked and boxed on the First Box Day after the Lapse of the said Fourteen Days; or if no Box Day intervenes, on the First Sederunt Day thereafter. As also provided, That such Reclaiming Notes shall not hinder the Clerk to the Bills from issuing the



assed Bill, or Certificate of Refusal, as the Case may be, r the Interlocutor submitted to Review from being carried into effect by the opposite Party, unless the Lord Ordinary n the Bills shall have stayed Proceedings, by prohibiting he Delivery of the Bill, or Issue of the Certificate, as provided for in Sect. 14.

XVI. That when a Bill shall be refused and Expenses found due, and a Second Bill shall afterwards be passed by another Lord Ordinary on the Bills, the Interlocutor pronounced on the First Bill shall be held as recalled in toto ; ut declaring, that all Claims of Expenses, hinc inde, arising out of the presenting of the First Bill, shall be reserved entire, and may be disposed of in the Process of Advocation r Suspension ; and when a Bill shall be refused, and Expenses found due, and a Certificate of Refusal shall be issued, such Expenses shall be modified, and Decree for the same shall be given out immediately after the Certificate shall be so issued.

XVII. That the Period allowed to the Complainer in Advocations, and in Suspensions as formerly, for expediting his Letters, shall henceforth be Ten Days from the Date of passing the Bill ; and in Cases from *Orkney* and *Shetland*, thirty Days. But it shall be competent to the Lord Ordinary on the Bills, upon Cause shown, to prolong the Time for expediting the Letters, and to prohibit the Keeper of the Signet from issuing his Certificate of the Non-expediting of the Letters.

XVIII. That where a Party shall delay to expedite his Letters, and a Certificate shall be duly obtained from the Signet Office after the above Period is elapsed, bearing that the Letters are not expedite, it shall not be competent thereafter to present any new Bill to the same Effect, unless upon Payment of the Expenses incurred by the opposite Party under the former Bill, which shall be modified and decreed for by the Lord Ordinary to whom the new Bill is presented. And the Lord Ordinary shall not give any Deliverance on the new Bill, until Evidence is produced that the Expenses have been paid.

XIX. That when in a Bill of Advocation of a final Judgment of an Inferior Court, an Interdict is craved, it shall be competent to the Lord Ordinary to order Answers, or to hear Parties on the Subject of the Interdict. And further, in all Bills containing an Application for Interdict, it shall be in the Power of the Lord Ordinary, if he thinks fit, to prohibit the Clerk of the Bills to give out a certified Copy of the Bill, or Interlocutor, for Intimation, till Caution shall be found.

*Bill Chamber.*

Expenses found due on refusing a First Bill reserved, if a Second Bill is passed.

Expenses shall be modified and decreed for on Issue of Certificate of Refusal.

Time for expediting the Letters, Ten Days.

Time for expediting may be prolonged.

New Bill prohibited, after Production of a Certificate of Letters not expedite, except upon Payment of Expenses.

In Bills craving an Interdict, Answers or Debate may be ordered, etc.

Provision as to Intimation.

*Outer House.  
Citations.*

Form of Intimation of Notes in the Bill Chamber.

The Clerk shall stay the Issue of a Certificate of Refusal, till a Note duly intimated is disposed of.

Bill Chamber Applications, relative to depending Processes, to be discussed as contingent therewith.

XX. That all Notes in the Bill Chamber requiring Intimation, shall be intimated to the Agent of the opposite Party, by delivering to him personally, or leaving at his Dwelling Place or Chambers a Copy thereof, and the Certificate of Intimation shall specify the Time of the Day at which this was done; and the Clerk of the Bills shall not lay the Note before the Lord Ordinary without such Certificate, nor sooner than Twenty-four Hours, at least, after such Intimation, and shall not issue a Certificate of a Bill being refused, until the Note shall be disposed of.

XXI. That when an Application is made to a Lord Ordinary on the Bills, which arises out of an Action depending before the Division of Court to which the Lord Ordinary does not belong, it shall be competent for him, if he sees Cause, to make Avizandum to that Division, and order the Bill, Answers, and Productions, if any, to be printed for the Use of the Judges thereof; and if that Division shall remit to an Ordinary to pass the Bill, the same shall be discussed, if insisted in, before a Lord Ordinary of that Division, in Terms of the 6th Geo. IV., c. 120 § 46.

*Outer House.**Edictal Citations.*

## II. FORM OF PROCESS FOR THE OUTER HOUSE.

1. *Form of Edictal Citations.*

XXII. That the Will of all Summonses passing his Majesty's Signet, where it may be necessary to cite the Defender as furth of *Scotland*, shall be conceived, so far as regards such Defender, in the following Terms:—

“Summon, warn, and charge the said personally, or at his Dwelling Place, if within *Scotland*, upon Twenty-seven Days' Warning, and if furth thereof, by Delivery of a Copy hereof at the Record Office of the Keeper of the Records of the Court of Session, in Terms of the Statute thereanent, and that upon Sixty Days' Warning;” and if such Defender shall be a Minor, the following Words shall be added, “and also the Tutors and Curators of the said , if he any has, for their Interest, at the Market Cross of , if he be within *Scotland*; and if he be furth thereof, by the same Delivery, for them, of a Copy hereof at the said Record Office, and, in either Case, upon the same induciæ as required for the said

himself.” And the same Form of Words, *mutatis mutandis*, shall be adopted in all other Letters passing his Majesty's Signet, bearing a Citation, Charge, Publication, or Service, against Persons furth of *Scotland*; and in all Cases in which One and the same Writ shall be executed at One and the same Time, against Two or more Persons as

Form of the Will of Summons, etc.

(One Copy only necessary.)

birth of Scotland, such Execution may be made by Delivery at the said Office of One Copy only, provided that such Copy bear upon its Face that it is delivered for all and each of such Persons.

*Procedure prior to Calling.*

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*Outer House.*

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*2. Proceedings in Outer House Causes, previous to Calling before the Lord Ordinary.*

*Procedure previous to calling before Lord Ordinary.*

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**XXIII.** That when a Multiplepinding is raised in the Name of a Holder of a Fund by One of the Claimants, it shall be intimated to the nominal Pursuer, by being served on him by a Messenger at Arms, in the same Manner, and on the same induciæ, as if he were One of the Defenders; and an Execution of such Intimation shall be returned along with the Executions of Citation.

Intimation to nominal Raiser of M. P. by a Messenger at Arms.

**XXIV.** That before Letters of Suspension or Advocation, complaining of a Judgment in an Inferior Court, are lodged with the Clerk for the Purpose of being called, or at the Time of such Lodgment, the Complainer shall lodge with him the Process in the Inferior Court, with an Inventory thereof; or if Production thereof shall have been already made in the Bill Chamber, the same shall, before the Time aforesaid, and on Requisition to that Effect by the Raiser of the Letters, be transmitted by the Clerk of the Bills to the Office of the Depute Clerk of Session named by the Complainer. And the Clerk of the Bills shall, in like Manner, on Production of expedite Letters, whether of Suspension or Advocation, transmit to the Office of the said Depute Clerk of Session, all Writings produced by either Party in the Bill Chamber, with an Inventory thereof, and shall not deliver up to the Parties any such Writings, except on the Application of both Parties, or when a Certificate of Refusal of the Bill has been issued, or when a Certificate from the Signet shall be exhibited, bearing that the Letters have not been expedite during the Time allowed for that Purpose, or when an extracted Protestation at the Respondent's Instance, applicable to the Case, shall be exhibited to the Clerk of the Bills. And such Transmissions, as well as every other Transmission from the Clerk of the Bills to any of the Clerks of Session, shall be made in the same Manner as is now practised in Transmissions from the Office of one Clerk of Session to that of another; the Proceedings in every Case being accompanied by a complete Inventory of the Process.

Inferior Court Process to be lodged with the Outer House Clerk, when Letters of Suspension or Advocation are to be called.

Transmissions from the Bill Chamber.

**XXV.** That in every Advocation where the Record has not been made up in the Inferior Court, and in every Sus-

Reasons of Suspension and Advocation to be lodged along with the Letters.

*Procedure prior to  
Calling.*

*Respondent to  
return Note of  
Pleas in Law, etc.*

*Day of lodging  
Summonses, etc.,  
in order to Calling  
by the Clerk.*

*Form of Par-  
tibus. Copy to be  
lodged.*

pension, at the Lodgment of the Letters for Calling, Reason of Suspension or Advocation shall be lodged therewith, and shall be, so far as depending on Matters of Fact, stated in an articulate Form, with a Note of Pleas subjoined; and if not so lodged, the Letters shall not be called; and all Answers to such Reasons shall be in a corresponding Form. And in the Case of Advocation of a final Judgment, where the Record has been made up in the Inferior Court, the same, if not objected to in this Court, shall be held to be the Record in point of Fact, but it shall be competent to the Complainer, if he think it fit, to lodge with the Letters a Note of additional Pleas in Law; and it shall also be competent to the Respondent, when he returns the Letters, to return therewith a similar Note of Pleas, and such being done, the Record shall be declared closed. But if it shall be alleged that the Record has been improperly completed, by Facts having been left out which ought to have been inserted, or which, from Oversight or Neglect, have not been stated, this shall be distinctly set forth as a Reason of Advocation or of Suspension, and the Lord Ordinary may, and shall, if he see Cause, order a new Record to be made up and closed in this Court, which shall be the Record on which Judgment shall be given in the Cause; and before allowing such Record to be made up, he shall take into Consideration the Expenses previously incurred in the Inferior Court, and award them by an interim Decree if he see just, or reserve them till the final Issue of the Cause.

XXVI. That every Summons, Advocation, or Suspension, in order to be called, shall be lodged with the Clerk on or before the Third lawful Day preceding that on which the Calling is to take place.

XXVII. That along with the Summons, Advocation, or Suspension, there shall be lodged an Inventory of the Process, and also a Copy (in plain legible Writing) of the Partibus, as written on the Summons or Letters; which Partibus shall contain the Name and Designation of the Pursuer, Advocator, or Suspender, or of each Pursuer, Advocator, or Suspender, if there be only Two; or, if more, the Name and Designation of the Party first named, with the Words, "and others:" And if the Defenders, Respondents, or Chargers, are not more than Three, their Names and Designations, One or more, shall be inserted in the Partibus, but if more than Three, the Partibus shall contain the Name and Designation of the Party first named, with the words, "and others, as per Roll;" referring to a separate Roll of all the Defenders, Respondents, or Chargers;

XXVI. Independent West Middlesex Co. 11 June 1840, 2 D. 1058.

XXVI., XXVII. Lang, 16 June 1831, 9 S. 748.

which Roll, together with a Copy thereof, shall, at the same Time, be lodged with the Clerk.

*Procedure prior to Calling.*

XXVIII. That each of the Clerks' Assistants in the Outer House shall, by weekly Rotation, take charge of the Calling Lists; and before Ten o'clock in the Morning of the Second lawful Day preceding that on which the Calling is to take place, the other Clerks shall deliver to the Clerk acting for the Time, the several Copies of Partibus aforesaid, lodged with them, those of each Office being separately arranged and numbered, together with the Copies of the separate Rolls lodged with them, as before enjoined; and the said Clerk acting for the Time shall cause the whole Copies of Partibus to be formed into One List for Calling, written or printed, to be hung up on the Calling Days in the Outer House, as formerly practised in regard to the several Lists for Calling, together with all the said relative Copies of separate Rolls.

Clerks' Calling Lists.

XXIX. That the Calling shall take place on the Second lawful Day before a Day for Enrolment of Causes; and no Cause shall be enrolled earlier than on the Second lawful Day after it shall have been called, unless special Leave shall be given by the Inner House.

Days of Calling and Enrolment.

XXX. That when Protestation is put up in the Minute Book, for not calling any Summons, Suspension, or Advocation, the Keeper of the Minute Book shall be bound to score the same, on Production to him (before a Warrant is issued for Extract of the Protestation) of a Certificate from a Depute Clerk of Session or his Assistant, that the Summons, Suspension, or Advocation, has been duly lodged with him, in order to Calling, and not otherwise; and after granting such Certificate, the Clerk shall be bound to see that the Procedure hereinbefore enjoined be regularly and immediately followed out in calling the same. And it is further declared, That a Protestation shall have no effect in transferring the Lead in the Cause from the Raiser of the Summons or Letters to the Party entering Protestation.

Scoring Protestation.

XXXI. That Appearance may be entered for Defenders, Respondents, or Chargers, in Terms of the Act of Sederunt, 11th March 1820, at any Time during Office Hours, after Six o'clock in the Afternoon of the Calling Day, or between the Hours of Six and Seven o'clock of the Afternoon of the Day following.

A Protestation shall not transfer the Lead.

Entering Appearance for Defenders, etc.

XXXII. That, upon entering Appearance, the Defender, Respondent, or Charger, shall have Right to retain the Process for Twelve Days after the Day on which it was called, but on or before the Thirteenth Day thereafter, in Time of

Taking to see and returning Summonses, etc.,

in Time of Session.

*Procedure prior to  
Calling.*

Exceptions as  
to Vacation or  
Recess ;

and Summons of  
Cessio Bonorum.

Where Appearance  
is separately en-  
tered, or more than  
One Party.

Copy Defences,  
etc., for Boxing to  
be lodged.

Session, he shall return it, and, if he abide by his Appearance, shall lodge therewith his Defences in the Action, or Answers to the Reasons of Advocation (where these are required), or Answers to the Reasons of Suspension ; and, in Case of a Suspension, the Charger shall, with his Answers, lodge the Charge, unless it be a Suspension of a threatened Charge. Providing, that where the said Thirteen Days expire during a Vacation or Recess, the Defender or Respondent may delay returning the Process with Defences or Answers till the first Box Day in Vacation or Recess. Declaring, That the Time to be allowed for seeing Summons of Cessio Bonorum shall in no Case exceed Six Days, and during the last Three Weeks of Session the Time shall be limited to Forty-eight Hours.

That when Appearance is entered by any Agent for One or more, but not for all the Defenders or Respondents, the Agent so entering the First Appearance shall be entitled immediately to borrow the Process, and the Appearance shall be marked by the Clerk on a separate Paper, to be retained by him for subsequent Entry of Appearance for any other Parties ; and in case Appearance shall afterwards be entered by any other Agent, that Agent shall intimate the same by Letter to the Agent by whom the Process has been borrowed, who shall in that Case be bound to return it on or before the Fourth Day after his Entry of Appearance, when there are more than Two Defenders, but if no more than Two, on the Seventh Day, so as Time and Opportunity may be allowed for the Agent or Agents of other Parties to examine the same, to whom it shall be lent by the Clerk, and if more than Two Defenders, each may retain it for Forty-eight Hours ; and the Lodgment of Defences or Answers by all the Parties who shall abide by their Appearance, shall be made on or before the Thirteenth Day after the first Calling of the Cause : and the Lord Ordinary may afterwards, on the Application of a Party who has not been permitted to borrow the Process before lodging Defences or Answers, and on Cause shown, allow his Agent to borrow the same, and allow Defences or Answers to be lodged within a reasonable Time thereafter.

XXXIII. That the Agent for the Defender, Respondent, or Charger, shall, along with the printed Process Copy of Defences, or Answers to Reasons of Advocation or Suspension, lodge in the Hands of the Clerk to the Process, another printed Copy for the Use of the Lord Ordinary, which shall be given to the Agent for the Pursuer, Advocate, or Suspender, when he borrows the Process to enrol, without any additional Fee ; and he shall deliver a printed Copy of the Summons, Letters of Advocation or Suspension,

along with such Copies of the Defences or Answers, to the Clerk who makes up the Outer House Rolls.

XXXIV. That if the Defender, Respondent, or Charger, shall fail to return the Process on or before the Thirteenth Day as aforesaid, the Clerk shall, if required, issue a Cap-  
tion for the same in common Form; and shall also, in case of Failure so to return the Process, or to lodge therewith Defences, or Answers to the Reasons of Advocation or Suspension, grant, if required, a Warrant of Enrolment, as if no Appearance had been entered: And the Keepers of the Outer House Rolls shall hold, as a sufficient Warrant for Enrolment, the Signature of the Clerk upon the Slip or Note for Enrolment, which, by the existing Usage, is furnished by the Agent to the Clerk who makes up the Outer House Rolls.

XXXV. Whereas it is provided by Section 27th of the Statute, That all rescissory Actions (except Reductions of the Decrees of the Court of Admiralty in maritime Causes) shall be enrolled and continue before the junior Lord Ordinary;—it is declared, That every Process of Reduction belongs to that Division to which the Clerk is attached, in whose Office the Process is lodged; and all rescissory Actions, which must be sent de plano to the Jury Court, shall be enrolled in the Regulation Roll only.

XXXVI. That in Reductions to be enrolled before the junior Lord Ordinary, if the Defender is to object to the Title of the Pursuer, or to plead on an exclusive Title, or to state any other Objection against satisfying the Production, he shall return Defences confined to these Points; but if otherwise, no Defences shall be given in at this Stage of the Proceedings: Declaring always, that it shall be competent to the Lord Ordinary, on Cause shown, though no Defences should be given in at this Stage, to reserve all Objections to the Title till the Cause shall be heard on the Merits; and the Lord Ordinary shall dispose of such Objections, in Terms of the Act 6 Geo. IV., c. 120, § 5.

XXXVII. That in Actions in which no Appearance has been entered, or in which Defences or Answers have not been returned, where this ought to have been done, it shall not, in the first Instance, be necessary to print and box the Summons or Letters for the Use of the Lord Ordinary; but, in the event of the Defender or Respondent afterwards applying to be reponed against a Decree in Absence, he shall, along with his Reclaiming Note, lodge with the Clerk a printed Copy of his Defences or Answers (where required), in addition to the Process Copy thereof, and upon his being reponed, the Raiser of the Summons or

*Procedure prior to Calling.*

Enrolment by Certificate of Clerk, on Failure of Defender or Respondent to return Process.

Reductions may be fixed before either Division.

Regulation Roll. Returning Defences in Reductions.

Summonses, etc., to be printed only when Appearance is made.

*Arrangement of  
Business.*

Letters shall print the same, and thereafter, at the first enrolling of the Cause in the Lord Ordinary's Hand Roll, there shall be delivered by the Party enrolling, to the Lord Ordinary's Clerk, for his Lordship's Use, a printed Copy of the Summons or Letters, and a Copy of the Defences or Answers (where required), previously lodged in Process. And in Processes of Reduction, a printed Copy of the Defences on the Merits shall be delivered by the Defender's Agent to the Lord Ordinary's Clerk, at the first Enrolment of the Cause in his Hand Roll, after the Lodgment of such Defences.

Printed Copies  
to be lodged with  
the enrolling  
Clerk, at Enrol-  
ment in Outer  
House Rolls.

*Outer House.**Arrangement of  
Business.*

XXXVIII. That the Clerk who makes up the Outer House Roll shall not enrol any Summons, which, by the Regulations of Court, is appointed to be printed, or any Letters of Suspension or Advocation, unless the printed Copies of the same, and of the Defences and Answers referred to in Clause 32, are then delivered to him, which shall be given by him to the Clerk of the Lord Ordinary when the Roll is completed.

Junior Lord  
Ordinary.

Order in which  
Teind Causes and  
Reductions shall  
be enrolled and  
called.

First and Second  
Division Causes  
to be called on  
different Days.

### 3. *Arrangement of Business, and Rotation of Lords Ordinary.*

XXXIX. Whereas, under the Provisions of the said Act 6 Geo. IV., c. 120, the Duty of the Outer House is to be performed by Seven permanent Lords Ordinary, it is enacted and declared, That the junior permanent Lord Ordinary shall discharge the Duty of Ordinary for Teinds, Reductions, and Special Remits, upon *Wednesday*, *Friday*, and *Saturday*, of each Week: That he shall call his Roll of Teind Causes upon *Saturday* at Nine o'clock in the Morning, and the Teind Clerk shall take up said Roll upon the *Wednesday* preceding, so as to be printed not later than *Thursday* preceding the Calling: That the Keepers of the Outer House Rolls shall divide the Reductions set apart for the junior Lord Ordinary into Two Rolls, one containing First Division Causes only, and the other containing Second Division Causes only; and his Lordship shall call one of these Rolls on *Wednesday*, and the other on *Friday*, beginning at Nine o'clock in the Morning. In like Manner, the Clerk of the said junior Lord Ordinary shall take up two Hand Rolls weekly, one containing First Division Causes only, which shall be called immediately after the Reduction Roll of that Division, and the other containing Second Division Causes only, which shall be called immediately after the Reduction Roll of that Division: And his Lordship shall have Power to call the Reduction Roll and Hand Roll of the First Division on *Wednesday*, and the Reduction Roll and Hand Roll of the



Second Division on *Friday*, or vice versa, as may be most convenient for the Dispatch of Business. The said junior Lord Ordinary shall further have Power to call a Hand Roll of continued Court of Session Causes for both, or either of the Divisions, after disposing of the Teind Causes on *Saturday*.

*Arrangement of  
Business.*

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XL. That each of the other Six permanent Lords Ordinary shall, in his Turn, officiate as Ordinary for the Week in the Outer House, and upon Oaths and Witnesses, a permanent Lord Ordinary of the one Division being always succeeded in that Duty by a permanent Lord Ordinary of the other Division alternately; but with Power to any of the other permanent Lords Ordinary, when in the Outer House, to take the Oaths of Witnesses and Parties.

Weekly Rotation  
of Lords Ordinary.

XLI. That of the said Six permanent Lords Ordinary, the Three Seniors shall call their respective Hand Rolls on *Tuesday* and *Wednesday*, and the Three Juniors on *Thursday* and *Friday*, beginning at Nine o'clock in the Morning. But if the Three Seniors belong to one Division, and the Three Juniors to the other, the youngest of the Seniors shall call his Hand Rolls on *Thursday* and *Friday*, and the eldest of the Juniors on *Tuesday* and *Wednesday*.

Ordinary on Oaths  
and Witnesses.

Days on which  
Lords Ordinary  
call their Rolls.

XLII. That the Lord Ordinary officiating in the Outer House for the Week shall call the Regulation Roll, and the Roll of Advocations and Suspensions, on the First Day of his officiating in the Outer House, and the Ordinary Action Roll on the Day following, with Power to call his Hand Rolls also on either Day, if Time permit; and also Power to call a Regulation Roll daily at the End of each Session as at present. On *Saturday*, when he is officiating for the Week, he shall call the continued Causes of that Week's Roll, if any, and also a Hand Roll: And each Lord Ordinary shall call a Hand Roll on the *Saturday* of the Week preceding that in which he is to officiate as Ordinary for the Week.

Order in which  
Outer House Rolls  
shall be called.

Regulation Roll.

XLIII. That the preceding Enactments, regarding the Arrangements and Rotation of Outer House Business, shall be followed out during the whole Course of the Winter and Summer Sessions without Exception.

Same Rotation  
throughout the  
whole Session.

XLIV. That the Bar in the South-west Room off the Outer House shall be exclusively allotted, upon *Tuesday* and *Friday*, at One o'clock, and upon *Thursday* at Ten o'clock, to the Judges of the Jury Court: That upon *Saturday*, One of the Bars shall be at the Disposal of the Court for the Use of any of the Three permanent Ordinaries appointed to sit on *Tuesday* and *Wednesday*, who may apply for it. In like Manner, on *Tuesday*, till One o'clock, One of the Bars shall be at the Disposal of the

Arrangement as  
to Outer House  
Bars.

*Outer House.*

*Proceedings before  
Ordinary.*

If no Defences,  
etc., Decree to be  
pronounced.

Reponing in Jury  
Court Causes.

Real Pursuer  
Haiser of M. P. to  
give Condescend-  
ence out with the  
Summons.

Nominal Pursuer,  
at first Calling of  
Cause, to give in a  
Condescendence or  
Objections.

Claims in M. P.

Common Agent  
may be chosen  
in M. P.

Court, for the Use of any of the other Four permanent Ordinaries who may apply for it.

#### 4. *Proceedings before the Lord Ordinary.*

XLV. That when the Cause comes to be called in the Outer House, if Defences, or Answers to Reasons of Advocation or Suspension, have not been lodged, as required, the Lord Ordinary shall pronounce Decree or Judgment in favour of the Pursuer, Advocate, or Suspend, as the Case may be; against which Decree or Judgment, the Defender, Respondent, or Charger, shall only be reponed by presenting a Reclaiming Note to the Inner House, before Extract, in Terms of the Act of Parliament, and Regulations hereinafter enacted.

XLVI. Whereas it is enacted, by Section 29th of the Statute, That if Decree in Absence has been pronounced in the Actions enumerated in the preceding Section thereof, as soon as the Defender shall be reponed, the Lord Ordinary shall forthwith remit the Cause to the Jury Court; it is declared, That in such Causes the Mode of reponing a Defender shall be by a Reclaiming Note to the Inner House; and upon Payment of such Expenses as may be thought reasonable, the Court shall then remit the same to the Jury Court.

XLVII. That in Multiplepointings, where the Person possessed of the Funds is the real Pursuer, he shall give out a Condescendence of the Fund in his Hands along with the Summons, and where he is only the nominal Pursuer, he shall, at the first Calling of the Cause, either give in a precise and articulate Condescendence of the Amount of the Funds in his Hands, stating likewise any Claim or Lien which he may think he has on the Fund, or produce Objections as his Defences against the Summons served as a Claim upon him; otherwise he shall be held as confessed, or a Condescendence may be ordered from any of the Claimants.

XLVIII. That in the further Preparation of the Cause, the Claimants in a Multiplepointing shall state their respective Claims in the Form of Condescendences, with the Conclusions to be drawn from the Facts so stated, in the Shape of Notes of Pleas, producing therewith their Grounds of Debt, and other Writings for instructing their Claims; and it shall be competent to the Lord Ordinary, if he see Cause, to appoint the Creditors to meet, and choose a common Agent, as at present practised in a Ranking and Sale,

XLV. Scottish Union Ins. Co. 8 July 1836, 14 S. 1114.—Mullar, 17 Dec. 1851, 14 D. 212.

XLVII, XLVIII. Denchar, 9 Feb. 1830, 8 S. 469.

who shall prepare and lodge a State of the Claims and Preferences, putting his Objections, as therein stated, to each or any of the Claims, in the Form of Answers to a Condescendence, with a Note of Pleas; and quoad ultra, the Duty and Nature of his Office shall be similar to that of a common Agent in a Process of Ranking and Division; and if no common Agent shall be appointed, the Parties shall be required to revise their Condescendences, each being allowed to state, in the Close of his Condescendence, his Objections to any other Claim or Claims, in the Form of Answers to a Condescendence, with a Note of Pleas; and thereafter, in every Instance, the Procedure shall correspond, as nearly as may be, to what is provided in the Case of an ordinary Action.

*Proceedings before Ordinary.*

Mode of Proceeding in M. P.

XLIX. That in Advocations and Suspensions, the Lord Ordinary proceeding to make up the Record in this Court, may order Amendments of, or Additions to, the Reasons of Advocation or Suspension, and Answers, or Condescendences and Answers, with Notes of Pleas, according as those Steps, or either of them, shall appear necessary; and if Condescendences and Answers, with Notes of Pleas, be ordered, those, with the Advocation or Suspension, shall form the Record.

Procedure in Advocations and Suspensions.

That a Note of Pleas given in as relating to any Condescendence or Answers, or other Paper in Process, shall, in every Case, with a separate Title as such, form the concluding Part of the Paper to which it relates.

Note of Pleas to be annexed to relative Paper.

L. It is enacted and declared, That the junior Lord Ordinary may remit rescissory Actions ob contingentiam to another Process depending in Court before the Inner House, or One of the other Lords Ordinary, of either Division.

Reductions may be remitted ob contingentiam.

LI. That in Reductions, if no Defences have been returned, it shall be held, unless in the particular Cases where the Pursuer himself must produce the Writs called for, that the Defender is to satisfy the Production, and he shall be bound to take a Day to satisfy accordingly, unless he shall be reponed by the Court on producing his Defences; and so soon as the Production is satisfied, the Lord Ordinary shall prepare the Cause for disposing of the Reasons of Reduction, by appointing Defences, after which the Record shall be made up, as in the Case of an ordinary Action; and, if the Pursuer finds it necessary to add any farther Reasons of Reduction to those contained in the Libel, it shall be competent for him, before the Record is made up, to state the same as an Amendment of the Libel; but in that Case he shall furnish the opposite Party with a Copy of the Amendment Forty-eight Hours before it is given in

Procedure in Reductions.

*Proceedings before Ordinary.*

Effect of Record made up in Inferior Court.

May be opened up by Lord Ordinary.

Form of Articles improbatory and approbatory in Improbations.

Papers to be signed by the Parties.

Production of Writings, where Summons and Defences are held as Record.

Writings to be produced before Record closed.

to Process, and pay such Expenses as the Lord Ordinary shall think reasonable; and the Defender shall give in Defences applicable to the said Amendment.

LII. That in all Advocations of final Judgments of Inferior Courts, pronounced in Causes which shall have been brought into these Courts on or after the 1st Day of *January* 1826, the Cause shall be debated upon the Record, as made up in the Inferior Court, and upon such additional Pleas in Law as shall have been lodged with the Clerk, as hereinbefore permitted; and if it shall appear to the Lord Ordinary that the Record has been improperly prepared in the Inferior Court, in consequence of defective Statements by both or either of the Parties, it shall either be competent to his Lordship to open up the Record, and to proceed to the Preparation of a new Record in common Form, or to remit to the Inferior Judge, with Instructions to that Effect, and with Power, in either Case, to pronounce such Judgment relative to the previous Expenses, including those incurred in the Inferior Court, as the Justice of the Case may require.

LIII. That in Causes where Articles improbatory and approbatory were required by former Practice, the Record shall be made up, by ordering a Condescendence of Articles improbatory, and Answers containing Articles approbatory, which shall be revised and accompanied with Notes of Pleas in Law; the revised Condescendence and Answers to be signed by the Parties respectively, as well as by their Counsel, except where, on Cause shown, and in respect of the particular Circumstances of the Case, it may be deemed necessary, for the Ends of Justice, to dispense with the Signature of a Party, and without Prejudice, in other respects, to the Forms of Procedure heretofore observed in such Causes.

LIV. It is declared, That where the Summons and Defences are held by the Parties as the Record, a farther Production of Writings may be made on either Side, provided this be done before the Record is closed, in Terms of the Statute; and, in the same Event, it shall also be competent for both or either of the Parties to apply for a Diligence for Recovery of such Writings as they can condescend upon to be necessary in support of the Action or Defence.

LV. That all Writings in the Custody of the Parties, or within their Power, which are founded on, and have not been previously produced, shall be produced according to Inventory, with the Condescendence and Answers, or mutual Condescendences, without Prejudice to the Production of

Writings, along with the revised Condescendence and Answers, which may have been rendered necessary by the new Averments or Productions of the opposite Party: And after the Record is made up and closed, it shall no longer be competent for the Party in any Case to Produce any Writing which was in his Possession, or within his Power, at the Time of completing the Record, unless he shall instruct that it is noviter veniens ad notitiam; but it shall be competent to the Parties to apply for a Diligence for Recovery of Writings in modum probationis; or to produce such Writings previously in their Power as may be rendered necessary by the Production of Papers made by the other Party after the Record is closed.

*Proceedings before Ordinary.*

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But a Diligence against Havers may be granted in modum probationis.

LVI. That when the Lord Ordinary sees cause, in virtue of the 6th Section of the Statute, to order an Amendment of the Libel, or new or additional Defences, and such Paper shall not be given in within the Time fixed, the Lord Ordinary shall pronounce such Judgment as the opposite Party may crave, not being inconsistent with the Shape and Nature of the Cause: And, in like Manner, when amended or additional Reasons of Advocation, or Suspension, or Answers, have been ordered, and have not been given in within the Time fixed, the Lord Ordinary shall pronounce a similar Judgment against the Party who has not obtempered the Order.

On Failure to lodge amended Papers, Judgment to be pronounced.

LVII. Whereas it is enacted, by Section 12th of the Statute, That on Failure to give in the Condescendence or Answers, the Lord Ordinary may hold the Summons or Defences as finally fixing the Averments in point of Fact of the Party so failing, it shall nevertheless be competent for the Lord Ordinary, on such Failure, if it shall appear to him that the Summons or Defences cannot, with Advantage to the due Disposal of the Cause, be sustained as fixing said Averments, to pronounce such Judgment as the opposite Party may crave, being not inconsistent with the Shape and Nature of the Cause; and in like Manner, on Failure to give in the revised Condescendence or revised Answers, accompanied, respectively, with Notes of Pleas in Law, within the Period fixed by the Lord Ordinary, Decree may be given as above, against which, in both Cases, the Party shall only be reponed by a Note to the Inner House within the reclaiming Days, producing therewith the Paper or Papers ordered, and on Payment of such Expenses as shall be thought reasonable: And in Suspensions and Advocations, where Condescendences and Answers have been ordered, the like Procedure shall be observed as nearly as

Failure to lodge Condescendences or Answers.

*Proceedings before Ordinary.*

Revised Condescendences not to be received without Notes of Pleas.

Res noviter veniens, or new Plea in Law.

Intimation of new Matter to be made, and Cause enrolled.

In case of Failure duly to close the Record, Decree to be pronounced.

Copy Record to be delivered to the Lord Ordinary's Clerk at enrolling for Debate.

Form of Copy Record.

Copy Proof, if any, to be also delivered.

may be, consistently with the Form and Nature of such Process.

**LVIII.** That the Clerk to the Process shall in no Case receive the revised Condescendence or revised Answer, unless they be accompanied by Notes of Pleas in Law, as specified in Section 9th of the Statute.

**LIX.** That after closing the Record, when either Party wishes to state on the Record Matter of Fact noviter veniens ad notitiam, or emerging since the Commencement of the Action, he shall enrol the Cause for that Purpose, furnishing to the opposite Party, at least Forty-eight Hours before the Enrolment, a Condescendence of such new Matter: And, in like Manner, if either Party wish a new Plea or Ground in Law to be stated on the Record, he shall enrol the Cause, and furnish the said new Plea to the opposite Party, Forty-eight Hours before the Enrolment.

**LX.** That when a Party, after reasonable Time and Opportunity for Revision and Adjustment of the Averments and Pleas in Law have been afforded by the Lord Ordinary, shall fail to close and authenticate the Record, in Terms of the Statute, or to state any satisfactory Ground for farther Delay, the Lord Ordinary shall pronounce such Judgment as the opposite Party may crave, not being inconsistent with the Shape and Nature of the Cause, against which the Party shall be reponed only upon a Note to the Inner House, within the reclaiming Days, and upon Payment of such Expenses as shall be thought reasonable, and consenting to close the Record immediately.

**LXI.** That the Party enrolling a Cause in the Debate Roll of any of the Lords Ordinary for Debate, where there is a Closed Record, shall, at the Time of Enrolment, deliver to the Clerk who enrolls the Cause a written or printed Copy of the Closed Record, and the Interlocutors, if any already pronounced thereon, or at least those necessary to explain the State of the Cause, without which the Cause shall not be enrolled: And wherever the Record has been made up on Condescendence and Answers, the same shall, for the Purpose hereby provided, be copied or printed, so that the Answer to each Article shall be opposite to the corresponding Article of the Condescendence, or each Article shall be opposite to the corresponding Article of the Condescendence, or each Answer shall be subjoined to the Article to which it relates: And when the Cause has previously depended in any other Court, and a Proof has been led therein, a Copy of the Proof shall at the same Time be delivered to the Lord Ordinary's Clerk.

**LXII.** Whereas by Section 16th of the Statute it is specially enjoined, That when Cases are ordered to be prepared, Regulations shall be made for compelling Obedience to such Order, it is enacted and declared, That when the Lord Ordinary, in the due Preparation of any Cause, shall order Cases for advising in the Outer House, he shall appoint the same to be lodged within a certain Period, to be fixed by him, on a due Consideration of the Circumstances; and, at the same Time, shall appoint them, after being so lodged, to be seen, interchanged, and relodged, within a certain Period, also fixed by him; and failing of the Cases, or either of them, being so lodged or relodged, the Lord Ordinary shall dismiss the Action with Expenses, or decern with Expenses, as the Case may be, against which the Party shall be reponed only upon a Note to the Inner House, accompanied by the Case, and on Payment of the previous Expenses; without Prejudice to the opposite Party's moving the Lord Ordinary to pronounce some other Interlocutor, in which Case it shall be competent for the Lord Ordinary so to do, if it shall appear that this will more effectually further the Object of preparing the Cause for Decision.

*Proceedings before Ordinary.*

Ordering of Cases.

Failure to lodge Cases.

**LXIII.** Whereas the Parties giving in Cases are entitled to be further heard, if they desire it, it is declared, That when the Parties, or either of them, wish to be further heard, they shall, in a Note, on their Case or Cases, mention their Desire to this effect to the Lord Ordinary, who shall appoint the Cause to be enrolled for Debate accordingly.—And to prevent unnecessary Expense, it is further declared, That the Lord Ordinary may, with Consent of both Parties, correct or alter any Interlocutor at any Time before Extract, provided that the Consent be given by the Counsel of the Parties in a Minute signed by them.

Debate after lodging Cases may be ordered, if either Party desire it.

Interlocutors may be corrected with Consent of Parties before Extract.

Cases for Report to Inner House.

**LXIV.** That when the Lord Ordinary, on hearing a Cause, considers that it should be disposed of by the Inner House, he shall appoint Cases to be put in to Process before himself, to be seen and interchanged, with the view of reporting the Cause to the Court, which shall be lodged under the Sanction contained in Section 62d hereof; and when both Cases, so prepared, are put in to Process, he shall make Avizandum with the Cause to the Court, and order the Cases to be immediately boxed, and grant Warrant to enrol in the Inner House Rolls.

Report of Jury Court Causes on Points of Law,

**LXV.** That in all Cases of Retransmission by the Jury Court to the Lord Ordinary of the Court of Session, for the purpose of determining any Point of Law or Relevancy, occurring previous to Trial, the said Lord Ordinary shall re-

¶ LXII. Minto, 23 Dec. 1831, 10 S. 190.—See 13 & 14 V., c. 36, § 14.

LXIII. Hunter, 1 June 1832, 10 S. 604.

*Proceedings before  
Ordinary.*

may be verbally,  
or by Cases.  
Dilatory Defences.

Report of inciden-  
tal Matter.

Objections to Re-  
port of Account-  
tant, etc.

Notice to Agents  
of Retransmission  
after Avizandum.

Transmission to  
Auditor.

port to the Inner House all such Matters, and that either verbally, or by Cases, as to him shall seem expedient; and in Case of dilatory Defences, the Lord Ordinary shall proceed as in the Case of dilatory Defences in Actions before the Court of Session.

LXVI. That the Intimation, referred to in the 19th Section of the Statute, of the Lord Ordinary's Intention to report verbally to the Inner House, any incidental Matter arising in the course of the Cause, shall be made to the Parties, by Interlocutor, pointing out the incidental Matter so to be reported.

LXVII. That when, in any Cause, a Report has been obtained from an Accountant or other professional Person, and the Parties, or either of them, shall be dissatisfied with the Report, the Cause shall be enrolled before the Lord Ordinary, for Debate on the Report, and a Note of the Objections shall be furnished to the opposite Party, Forty-eight Hours before the Enrolment; and, at the Time of enrolling the Cause, a Copy of the Note of Objections shall be furnished to the Lord Ordinary's Clerk, for his Lordship's Use: and, upon hearing Parties, the Lord Ordinary may order Cases, or otherwise dispose of the Note of Objections as he sees Cause.

LXVIII. That when a Process, after having been at Avizandum before the Lord Ordinary, is retransmitted, the Clerk of Court shall send Notice thereof, by Billets by Post, to the Agents for the Parties.

LXIX. That when Expenses are found due to a Party, and a Remit is made to the Auditor to tax the Account thereof, the Account, together with a Copy of the Interlocutor finding Expenses due prefixed thereto, shall be lodged with the Auditor, who shall thereafter fix a Time for the Taxation thereof, and a Copy of the Account, together with the Auditor's Warrant for taxing, shall be served on the Agent for the Party or Parties found liable in Expenses, that he may attend at the Time so fixed; and the Agent for the Party found entitled to Expenses shall attend at the same Time, and produce the Process, or such Part thereof as may be necessary for the Taxation of the Account, together with the Drafts or Copies of Papers, and other Vouchers of his Account, to the Auditor; and after the Account is taxed, the Agent shall be entitled to get back the Process in order to return the same to the Clerk, except in those Cases where it may be necessary for the Auditor to retain the same for further Examination; in which Case, a Receipt shall be given by the Auditor or his Clerk for the Process.

LXX. That with regard to all Actions which were de-



ending in Court prior to the 12th Day of *November* 1825 years, and which are still in Dependence, the Form of Proceeding hereby established shall be observed, so far only as consistent with Justice, and the existing state of the Process: And if any such Causes either have been, or shall be hereafter decided by the Lord Ordinary, without a Closed Record, the said Lord Ordinary may, if he see cause, allow One Representation and Answers; on advising which, or when the Merits of the Cause are finally decided, he shall, if the same have not been previously done, determine the point of Expenses.

*See General Regulations, p. 555.*

## II. FORM OF PROCESS FOR THE INNER HOUSE, AND IN INNER HOUSE CAUSES.

### 1. *Proceedings on Reclaiming Notes, etc.*

LXXI. That in order to give more Time for Counsel to attend the Lords Ordinary, in preparing Causes in the Outer House, the Two Divisions of the Inner House shall not meet till Eleven o'clock.

LXXII. That a Party wishing to be reponed against a Decree in Absence, may apply to the Inner House, by a short Note, before Extract, accompanied with the Defences, or other Paper required, merely setting forth the Interlocutor, or Decree, when the Court shall remit to the Lord Ordinary to repon the Party, on Payment of such Expenses as to his Lordship may seem reasonable, who shall thereafter prepare and proceed in the Cause as accords; and all after Proceedings and Interlocutors shall be held to be in foro, and be conclusive accordingly: And similar Procedure may take place in the Case of a Decree pronounced against a Party for Failure to implement any Order.

LXXIII. That although the Party, against whom Decree in Absence, or upon Failure, has been pronounced, shall be on the Poor's Roll, he shall not be reponed without Payment of Expenses, as above provided, unless it shall appear, upon Investigation, that the Decree so pronounced has gone out from the Inability of the Party to furnish the necessary Information, and not from the Fault or Neglect of the Agent in the Cause, or the wilful Neglect of the Pauper himself.

LXXIV. That in Causes which were in Dependence previous to 12th *November* 1825, and in which the Lord Ordinary shall have pronounced Judgment, without a Closed Record, the Party dissatisfied with any Interlocutor may bring the same under the Review of the Inner House, by

*Reclaiming Notes, etc.*

Procedure in old Causes.

A Representation and Answers may be allowed.

*Inner House.*

*Reclaiming Notes, etc.*

Hour of Meeting of Inner House.

Reponing against Decree in Absence.

Reponing of Paupers.

*Reclaiming Notes in old Causes.*

*Reclaiming Notes,  
etc.*

a short Note, as enjoined by the 18th Section of the Act which shall be marked by the Clerk, and by the Collector of the Fee Fund, and lodged like other Reclaiming Notes. Provided that, where a Representation is allowed, under Authority of the 71st Section hereof, such Reclaiming Note shall be competent only after a Representation has been given in accordingly, and has been finally disposed of, and to every such Reclaiming Note the Party shall append the Summons and Defences as at present required, and shall also print and append the Memorials, or Representation and Answers, if any, on which the Interlocutor complained of proceeded.

Appendix.

Reclaiming Notes  
in Bills of Suspension.

LXXV. Whereas it is expedient that the Court should have an Opportunity of perusing the Bill of Suspension and Answers, before advising a Reclaiming Note, complaining of any Interlocutor of the Lord Ordinary on the Bills passing or refusing such Bill, it is enacted and declared, That there shall be printed and appended to every such Reclaiming Note a full Copy of the Bill, or Bill and Answers; and no Reclaiming Note shall be received or advised without having such Copy annexed thereto.

Appendix.

Interlocutors on  
Report from the  
Bill Chamber are  
Inner House  
Judgments, and to  
be signed by the  
Lord President.

LXXVI. Whereas, when a Case is taken to report to the Inner House by the Lord Ordinary on the Bills, the Interlocutor pronounced thereon is, in reality, the Judgment of the Inner House, it is enacted and declared, That the same shall be considered as a Judgment of the Inner House, and be signed by the Lord President of the Division accordingly.

Reclaiming Notes  
against Interlocutors  
in foro.

LXXVII. That Reclaiming Notes, not being against Decrees in Absence or upon Failure to comply with Orders, shall at first be moved merely as single Bills, and immediately ordered to the Roll, and shall then be put out in the Short or Summar Roll, as the Case may be. Provided always, that such Notes, if reclaiming against an Outer House Interlocutor, shall not be received unless there be appended thereto Copies of the mutual Cases, if any, and of the Papers authenticated as the Record, in Terms of the Statute, if the Record has been closed; and also Copies of the Letters of Suspension or Advocation, and of the Summons, with Amendment, if any, and Defences (excepting Summonses of Multiplepointing, Adjudication, Constitution, Wakening, Transference, and Cessio Bonorum, and Defences therein); and provided also, that when any of the Proceedings or Documents in a Cause have once been

Reclaiming Notes  
against Judgments  
of Lords Ordinary  
in foro.

Appendix.

LXXVII. Dickson, 9 June 1830, 6 S. 895.—Ballandene, 20 Dec. 1831, 10 S. 168.—Cobb, 11 July 1833, 11 S. 998.—Fraser, 18 Nov. 1833, 12 S. 21.—Strathmore, 12 Jan. 1836, 14 S. 208.—Carter, 6 Feb. 1847, 9 D. 598.—Maxtone, 24 May 1848, 10 D. 1040.—Ballintine, 14 Nov. 1848, 11 D. 26.

printed and boxed in the Appendix to any Note or other Paper given in to the Inner House, it shall not be necessary, at any subsequent Stage of the Cause, to box the same again, but only to refer to such former Paper, by its Description and Date, as containing the same in the Appendix thereto. And the Respondent shall, at moving the Note, be entitled to crave Leave from the Court to print any additional Productions which he may think necessary to be laid before the Court for their Consideration, reserving the Question by what Party the Expense of such additional Printing shall be defrayed.

*Reclaiming Notes,  
etc.*

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LXXVIII. That where a Reclaiming Note is presented against an Interlocutor not exhausting the whole Merits of the Cause, it shall be competent for the Court, either when such Note is moved in the single Bills, or when it is put out in the Short or Summar Roll, to supersede Consideration thereof till other Points in the Cause are disposed of by the Lord Ordinary, or to remit to the Lord Ordinary to recal the Interlocutor, and thereafter pronounce an Interlocutor exhausting the whole Cause.

Reclaiming Notes  
against interlocu-  
tory Judgments

may be superseded  
or remitted.

LXXIX. It is declared, That where the Twenty-one Days allowed by the Statute, for presenting a Note reclaiming against an Interlocutor of a Lord Ordinary in the Outer House, expire during Vacation or Recess, the reclaiming Days continue open till the First Box Day in the Vacation; or if they expire during the Recess, the reclaiming Days shall continue open till the Box Day in the Recess; or if they expire after the Box Day in the Recess, they shall continue open till the First Sederunt Day after the Recess.

Reclaiming Days  
not to expire in  
Vacation and Re-  
cess till Box Day,  
etc.

LXXX. That where a Party in any Instance fails to lodge his Paper within the Time fixed, the Cause may immediately, on the Expiry thereof, be enrolled in the Summar Roll; and Judgment shall be pronounced against the Party so failing, in such Manner, and to such Extent, as may, in the Form and Circumstances of the Process, be competently craved; unless in those Cases where no Prorogation has been previously granted, the Party failing can satisfy the Court that a further Time ought to be allowed to him; but such Prorogation shall be granted only on Payment of such previous Expenses as the Court shall judge reasonable.

Enrolment in  
Summar Roll and  
Procedure on  
Failure to lodge a  
Paper.

LXXXI. That when Causes come forward in the Short Roll, or Summar Roll, to be advised, no Delay shall be granted on account of the Absence of Counsel or Agent, except in the Case of unexpected and necessary Absence, and then only for such short Time as may be necessary to

When Advising  
may be delayed on  
account of the  
Absence of Counsel  
or Agent.

*Remits to Lord Ordinary.*

Proofs and Productions to be printed with lettered Margins.

Printed Papers to be boxed for Collectors of Decisions, etc.

*Inner House.**Remits to Lord Ordinary.*

Proceedings of Freeholders.

Presenting and remitting Petitions and Complaints.

Procedure after Remit, when Cause turns on Matter of Fact.

Procedure after Remit,

instruct other Counsel or Agent. And every Enrolment in the Summar Roll shall be on or before the Second Day preceding the Advising, except that during the last Seven Days of each Session, such Enrolment may be made on the Day preceding the Advising.

**LXXXII.** That where it is necessary, for the Consideration of the Court, to print any Productions which have been made, or any Proof which may have been led, it is enacted and declared, That in printing the same, Letters shall be affixed on the Margin, as was practised formerly in prepared States of Proof, for the more ready Reference.— And it is further enacted and declared, that Copies of all printed Papers shall be boxed to the Collectors of Decisions, and the Curators of the Advocates' Library, and for which the Agents respectively shall be answerable.

*2. Proceedings under Remits to the Lord Ordinary.*

And whereas, in certain Inner House Causes, it is expedient that the same should be remitted to the Lord Ordinary, for the purpose of being prepared and reported by him for the Decision of the Court, it is enacted and declared,

**LXXXIII.** That in Petitions and Complaints against the Proceedings of Freeholders, either at Michaelmas Head Courts, or at Elections of Members of Parliament, the Petition and Complaint shall be presented according to the Form at present established; and the Court shall pronounce an Interlocutor, ordering Service thereof, and Answers to be put in, in Writing, within Fifteen Days after Service; and, at the same Time, remitting the Case, de plano, to the junior Lord Ordinary; but with Power to the Court to remit such Petitions and Complaints to any of the other Lords Ordinary, as nearly in Rotation as may be, if at any Time, in consequence of the Accumulation of such Proceedings, or from any other Cause, it shall seem expedient so to do; and with Power also to the Court, or Lord Ordinary, to remit any such Petition and Complaint to any other Lord Ordinary, ob contingentiam.

**LXXXIV.** That after the Time allowed for Answers, or after Answers have been given in, the Cause shall be enrolled before the Lord Ordinary, who shall proceed to prepare the same, according to the Nature of it, as nearly as possible in conformity with the Form in other Processes; provided always, that in case of no Answers being given in, or in case of Failure of either Party to comply with any other Order to be made by the Lord Ordinary, it shall be competent to his Lordship to report the Cause to the Court, in order that Judgment may be given in Absence, or upon

**Failure of complying with any Order, as the Case may require.**

*Remits to Lord Ordinary.*

**LXXXV.** That if the Cause shall appear to turn merely on a Point of Law, the Lord Ordinary shall order Notes of Pleas; and thereafter shall take them, with the Petition and Complaint, and Answers, to report, either with or without Cases, as he shall judge proper.

When Cause involves a Point of Law.

**LXXXVI.** That the Lord Ordinary, if he shall deem it expedient, may order Condescendence and Answers, with Notes of Pleas; and thereafter, if necessary, frame and send an Issue or Issues to the Jury Court, or he may remit the Cause to the Jury Court, to prepare an Issue or Issues, or he may take the Cause to report as above, either with or without Cases.

Lord Ordinary may report on Cases;

or remit to Jury Court.

**LXXXVII.** That the Condescendence and Answers, and Notes of Pleas, with the Issues and Verdict, if any, shall be printed, and taken to report along with the Petition and Complaint, and Answers to it.

Papers for Report to be printed.

**LXXXVIII.** With regard to Petitions and Complaints agniast the Proceedings of Magistrates and Councils of Royal Burghs, in Matters of Election, it is enacted, That the same Form of Proceeding shall be observed, as nearly as may be, as in Petitions and Complaints against the Proceedings of Freeholders.

Royal Burghs Petitions and Complaints, etc.

**LXXXIX.** With regard to Petitions and Complaints against Magistrates or Officers of the Law, or against Members of the College of Justice, or judicial Factors, or Factors loco tutoris, or other Managers appointed by the Court, for Malversation: And with regard to Petitions and Complaints for Breach of Interdict or Contempt of Court,

Petitions and Complaints for Malversation.

It is enacted and declared, That, as nearly as the Nature of the Cause will allow, the same Form of Procedure shall be observed as that above prescribed; provided always, that in such Causes the Lord Ordinary, in taking them to report, shall do so upon Cases. And provided also, that in any of these Causes it shall be competent to the Court to hear and decide according as the Circumstances of the Case may require, without making any Remit to the Lord Ordinary.

Breach of Interdict, etc.

**XC.** In Petitions and Complaints for fraudulent Bankruptcy, it is enacted and declared, That the Petition and Complaint shall be given in to the Court as at present, who shall pronounce an Interlocutor, ordering Service thereof, and Answers in Writing to be put in, and at the same Time remitting to the junior Lord Ordinary, who shall hear the Parties and prepare the Cause, either by a Remit to an Accountant to examine the Books of the Bankrupt, and to report, or by ordering Condescendence and Answers; the

Fraudulent Bankruptcy.

*Proceedings under  
Bankrupt Act.*

Accountant's Report, or the Condescendence and Answer, to be printed and reported, when Counsel shall be heard, if the Parties require it, and Judgment pronounced as accords, or such further Proof or Investigation ordered as the Court may deem necessary and competent, either by Remit to the Jury Court or otherways, as the Court may see Cause.

*Inner House.**Proceedings under  
Bankrupt Act.**3. Proceedings under Bankrupt Statute.*

XCI. And whereas it is expedient, that certain Cases under the Bankrupt Act should be remitted to the Lord Ordinary, with Power to him, either to give his own Decisions or to report; and also, that other Regulations should be made relative to Proceedings under said Act, it is enacted and declared, That Petitions for Sequestration, personal Protection, Confirmation, Approval of Composition and Discharge, or other summary Applications, shall be given in as formerly; but in such Applications it shall not be necessary to quote verbatim, or ad longum, the Clauses of the Act founded on, and it shall be sufficient to refer to the particular Sections of the Act.

Form of Petitions  
for Sequestration,  
etc.

Competitions in  
Petitions for Con-  
firmation.

When Case turns  
on personal Objec-  
tion.

When on Objec-  
tions to Votes.

Lord Ordinary  
may decide or re-  
port.

Procedure in other  
Petitions, and  
Petitions and  
Complaints  
against Trustees,  
etc.

XCII. That in Petitions for Confirmation, if there be no Competition, the usual Interlocutor shall be pronounced: But if there be Competition, the Petitions shall, de plano, be remitted by the Court to the junior Lord Ordinary, to hear and prepare the Cause; and if (1.) the Competition turn on personal Objection to either of the Candidates, the Ordinary shall, if necessary, order a Condescendence and Answers, in Terms of the Act, and proceed to ascertain the Facts, if disputed, in such Manner as he shall judge best: But if (2.) the Competition turn on Objections to Votes, the Ordinary shall order Objections or mutual Objections to be given in, and seen and interchanged, after which he shall either give his own Judgment, or remit these, as at present practised, to the Sheriff Depute of the County, or other Advocate of Three Years' standing, to examine the same, and report to the Lord Ordinary: And finally, the Cause being so prepared, the Lord Ordinary, after hearing Counsel, shall either give his own Judgment, or report the Cause on Cases, as he shall see fit.

XCIII. That in Petitions against the Decision of the Trustee in ranking the Creditors, and for Approval of Composition, or granting Discharges to Bankrupts, if opposed; and also in Petitions and Complaints against interim Factors or Trustees, for Malversation in Office, or for their Removal from Office, and all others of the like Nature, the Petition, or Petition and Complaint, shall be ordered to be served and answered in Writing, and at the

same Time shall be remitted to the junior Lord Ordinary, to be heard and prepared according to the Nature of the Case; and the Ordinary shall either give Judgment, or take the Cause to report, as he shall see fit.

*Proceedings under  
Bankrupt Act.*

XCV. That in Petitions against the Resolutions of Creditors, which generally relate to a Question of Expediency in the Management, the Court shall hear Counsel, and give Judgment, *de plano*, unless they specially order Cases.

Petitions against  
Resolutions of  
Creditors.

XCV. And whereas it may be necessary, that Cases under the Bankrupt Act, specially remitted to the junior Lord Ordinary, should be proceeded in during the Not-sitting of the Court; and whereas, by the Bankrupt Act, (§ 66), it is enacted, That the Lord Ordinary on the Bills shall have the full Powers of the Court in ordering and following out the different Steps of Proceeding required by the Act, while the Court is not sitting (excepting in the Case of a Discharge, as therein mentioned), it is enacted and declared, That in all Causes under the said Bankrupt Act, which, at the Rising of the Court for the Vacation or Christmas Recess, may be depending before the junior Lord Ordinary, upon a Remit made as hereinbefore directed; and in which, if no such Remit had been made, it would have been competent to the Lord Ordinary on the Bills to have proceeded during the Not-sitting of the Court, it shall still be competent to the said Lord Ordinary on the Bills, to whichever Division he may belong, to proceed accordingly, notwithstanding of such Remit, and without any new or further Remit to him; declaring also, that in such Cases, the Lord Ordinary on the Bills shall have the same Powers, in all respects, as it would have been competent for the junior Lord Ordinary to exercise, had the Case continued to depend before such junior Lord Ordinary. Declaring also, that if either of the Parties is to reclaim against any Deliverance so pronounced, he shall reclaim to that Division by which the Remit was made. And declaring also, that if, on the Sitting-down of the Court, any such Cases shall not have been brought to a final Conclusion by the Lord Ordinary on the Bills, it shall then be competent to the junior Lord Ordinary again to take up the Cause, and proceed therein, and finally dispose of the same, without any new Remit to that effect.

Lord Ordinary on  
Bills may proceed  
in Vacation, not-  
withstanding of  
Remit to junior  
Lord Ordinary.

Lord Ordinary on  
the Bills to pro-  
ceed in Vacation.

XCVI. That all Proceedings in the Petitions and Complaints, and other Inner House Causes before mentioned, shall be summary, both before the Lord Ordinary and in the Inner House.

Proceeding  
Causes summary.

4. *Proceedings in the Inner House, in Inner House Causes.*

*Inner House.*

XCVII. That in Provings of the Tenor, the Form of

*Inner House  
Causes.*Proving of the  
Tenor.Actions of Ali-  
ment.  
Special Defences.Preliminary De-  
fences.

Merits.

Interim Alimant.

Procedure in  
Cessio Bonorum.Objection that all  
the Creditors are  
not called.

Proceeding shall continue as formerly, except that, if it shall appear necessary, the Court may direct a special Issue, as to particular Facts, to be tried before the Jury Court; the Issues and Verdict to be returned to the Court of Session for its Judgment.

XCVIII. In Actions of Alimant, it is enacted and declared, That the Defender shall give in special Defences, as at present.

XCIX. That thereafter the Counsel shall be heard on any preliminary Defence, such as the Liability of the Defender, or Objection to the Jurisdiction of the Court, on which the Court shall give Judgment, or order Cases, as they shall see fit.

C. That if the preliminary Defences be repelled, the Counsel shall then be heard as to the Amount of the Alimant; and if the Amount of the Fortune of the Defender, and the destitute Situation of the Pursuer be admitted, the Court shall modify the Alimant; but if the Parties are not agreed on the above Facts, the Court shall order Condescendences and Answers to be given in, and revised, and thereafter shall order such Investigation into the Circumstances of the Parties, by Remit to an Accountant, or otherwise, as they shall see fit; the Report of the Accountant, or other Proof, to be reported to the Court, for their Judgment on the Amount of Alimant to be awarded, who shall hear Counsel thereon, if the Parties desire it; without prejudice to an Award of interim Alimant at any Stage of the Proceedings, where such shall appear to be proper.

CI. In Processes of Cessio Bonorum, it is enacted and declared, That the Parties shall be heard viva voce, as at present; and if no further Inquiry appear to be necessary, the Court shall determine the Cause de plano: But if the Court shall find it necessary to examine into the Case more particularly, they shall order a new or amended Condescendence, which shall be answered in Writing, after which both Papers shall be revised and printed; and when printed, Counsel shall be heard, and the Court give Judgment, or order such Proof or Investigation as may be proper.

CII. That when Objection is made that all the Creditors have not been called, the Objector shall come prepared with a List of the Persons whom he alleges to be Creditors, and not to have been called; and neither he nor any other Creditor (who has previously been cited as a Defender) shall be afterwards allowed to repeat the same Objection with new Names: And the Bankrupt shall be obliged to call the Persons in the List so given in; but if any of them shall prove not to be Creditors, the Objector shall be found



able in the Expense of citing them, and in any other Expense occasioned by his Objection.

*Inner House, etc.*

#### IV. REGULATIONS APPLICABLE TO BOTH OUTER AND INNER HOUSE.

*General Regulations.*

CIII. That in Processes of Adjudication, Count and Reckoning, Ranking and Sale, Sale of a Pupil's Heritage, Division of Commonly, Division of Runrig Lands, Division among Heirs Portioners, choosing of Curators, pointing of the Ground, and other extraordinary Actions, other than those hereinbefore provided for, it shall be in the Power of the Court, or the Lord Ordinary, to require of Parties to proceed according to the Forms applicable to ordinary Actions, in so far as in each particular Instance it shall appear fit and expedient to apply these; but except in so far as a Compliance with these shall be specially required, such Actions shall proceed according to the Forms in Use in such Actions, before the passing of the Statute, except in regard to the Power and Mode of Review of any Interlocutors pronounced therein.

Extraordinary Actions, viz., Adjudication, etc.

CIV. That the Summons or Letters of Advocacy, or Suspension, Petition, or Complaint, or other Writ by which a Process is commenced, together with the Executions of Service or Citation thereon, shall remain constantly in the Hands of the Clerk of Process, subject to Inspection by any Party interested, and shall on no account be lent up, but a Copy of such Writ, either printed or in manuscript, certified as Correct by the Agent giving it in, shall be lodged along with the Principal, in order to be lent up when required; saving and excepting always in the special Cases following, viz.:—1st, In the Case of a Defender, Respondent, or Charger, entering Appearance; the Writings being, in such Case, returnable in Terms of Section 32. 2dly, In the Case of a Pursuer, Advocate, or Suspender, for the purpose of Enrolment. 3dly, In the Case of a Party intending to apply for Letters of Inhibition, or Arrestment, on the Dependence of a Process; and, 4thly, In the Case of a Petition for Sequestration required to be borrowed for the purpose of Registration. And further, in order to prevent as far as possible the Detriment to the Record, and Danger to Litigants, in consequence of the Practice of allowing the Proceedings before the Court to remain during a long Period out of the Custody of the public Officers, the Principal and Depute Clerks of Session, and their several Assistants, are enjoined, as soon as may be after the Close

Summons, etc., not to be lent up.

Except in Cases mentioned.

Processes lent out, to be called back at the Expiry of a Year.

*General Regulations.*

Processes periodically called back may be again lent

Form of revised Condescendences and Answers.

Additional Statements of Facts.

of every Session, to examine what Receipts remain at the Time outstanding in their respective Offices, for Writings borrowed during the corresponding Session of the immediately preceding Year, and to require the immediate Return of such Writings to the Office, and, if necessary, to apply for and enforce the ordinary Compulsitor by Caption, for Recovery thereof, without prejudice to the same being lent again on a new Receipt, if required, and with this Exception from the said Injunction, that, in the Case of Writings produced in any Process, if such Writings have been borrowed by the Agent of the Party producing the same, the Clerk or Assistant shall not, unless at the Instance of a Party to the Process, insist for the Return of such Writings.

CV. That in all Cases the Condescendence and Answers, and mutual Condescendences, as well as revised Condescendence and Answers, shall be drawn and signed by Counsel. That when a Party is ordered to give in a Condescendence, he shall set forth, without Argument, in separate and distinct Articles, the whole Facts which he avers and offers to prove in support of his Case; and the Respondent, on his Part, shall answer each Article in such Condescendence in their Order, and shall distinctly admit or deny, in whole or in part, the Statements therein contained, without Argument, or introducing into such Answer, any Counter Statement or Averment on his Part; but in case the Respondent shall have such Counter Statement or Averment, on his Part, to make, it shall be competent for him, and he shall be bound to do so under a separate Head annexed to his Answer, to be intituled, "Respondent's Statement of Facts," in which he shall, in like Manner, without Argument, set forth the whole Facts which he avers and offers to prove as pertinent to his Side of the Case. The Party who has lodged the Condescendence shall then be entitled to revise his Paper, and subjoin, under a separate Head, to be intituled, "Answers to the Respondent's Statement of Facts," an Answer to such Statements, in their Order, by either admitting or denying the same, in whole or in part. And in case any further Counter Statement shall become necessary on his Part, in consequence of the Respondent's Statements, the same shall be added, in an additional Article or Articles, at the End of his said Answers: And the Respondent shall be afterwards entitled, in the precisely same Manner, to revise his Answers and Statement of Facts, the revised Condescendence and Answers being each a complete Paper, bearing no Reference to the original Condescendence and Answers, except in the Case where these original Papers require no

Alteration, or such trifling Alterations or Additions as can easily be made on the Margins of the Paper; and when a Statement in point of Fact, within the opposite Party's Knowledge, is averred on the one Side, and not denied on the other, he shall be held as confessed.

CVI. That in all Causes, wherever the Condescendence and Answers, as revised and finally adjusted for the Record, shall be printed, this shall be done either in double Columns on the same Page, so that the Answer to each Article shall be opposite to the corresponding Article of the Condescendence, or each Answer shall follow, and be subjoined to the Article of the Condescendence to which it relates.

CVII. Whereas it is enacted, That wherever Cases shall be given in, either to the Inner or Outer House, each Ground of Law or Plea, as stated in the Record, shall be separately argued; it is hereby declared, That the Addition which may be made, when the Cases are interchanged, shall be inserted under the proper Head of the original Argument on each separate Plea, and not by Way of Addition at the End of the Case. And that the revising of the Cases shall be by exchanging the original Draughts, so that nothing shall be made Part of the Process but a clean Copy of the Cases on each Side.

CVIII. That the Time specially fixed for reporting a Diligence shall not be prorogated, nor the Diligence renewed, except on Payment of such previous Expenses as the Lord Ordinary or the Court shall modify, unless, before the Lapse of the Time so fixed, special Application shall be made for such Prorogation; and it shall only be granted on Cause shown; and the Party failing to report a Diligence, shall be held to have abandoned his Wish to recover Writings by a Diligence, and Circumduction shall be granted for not reporting; and the like Rule shall be followed in the Case of Commissions granted for taking Proofs, Declarations, or Oaths of Parties.

CIX. That in all Interlocutors, either of the Lord Ordinary or of the Court, ordering or allowing Papers from both or either of the Parties, a Time shall be fixed for giving in the same, with due Regard always to the Nature and Circumstances of the Case;—which Time may be prorogated, provided, before the Lapse thereof, special Application, by Note or otherwise, shall be made for such Prorogation; and no Prorogation shall, in any Instance, be granted, except on Cause shown, nor oftener than once.

CX. That every Paper given in to Process in the Inner or Outer House, in Terms of an Interlocutor, ordering or allowing the same to be given in, and also every Reclaim-

*General  
Regulations.*

Party to be held  
confessed on Facts  
not denied.

Form of printing  
Condescendences  
and Answers.

Additions to Cases.

Reporting Dili-  
gence.

Time for reporting  
may be prorogated.

Commissions.

Time to be fixed  
for giving in  
Papers,

may be prorogated.

Interlocutors to be  
prefixed to Papers  
and Reclaiming  
Notes.

*General  
Regulations.*

Prorogation of  
Time for lodging  
certain Papers  
may be allowed by  
Consent.

Each Party may  
ask a Prorogation.

Papers must be  
duly signed when  
lodged with Clerk.

Reclaiming Note  
must be accom-  
panied with the  
Paper ordered.

Date of lodging  
Papers to be  
marked by the  
Clerks.

Papers falling due  
on Saturday

ing Note, and every Note craving to reponne the Petitioner, which, by Act of Sederunt, is required to be presented within the reclaiming Days, shall have prefixed thereto a full Copy (including the Date) of the Interlocutor ordering or allowing such Paper, or of the Interlocutor complained of, as the Case may be, and which Interlocutor need not be repeated in the Body of the Paper, and shall also have prefixed, in like Manner, a Copy of any Interlocutor prorogating the Time originally allowed.

CXI. That the Time limited for giving in Papers, other than Reclaiming Notes, may at any Stage of the Proceedings be prorogated, without the Necessity of any Application to the Court, or Lord Ordinary, if both Parties consent, provided that such Consent be given in Writing under the Signature of the respective Agents, and a Copy of such Prorogation, by Consent, shall be prefixed to the Paper when given in, as well as of the Interlocutor ordering or allowing the same to be given in.

That a Prorogation granted on the Motion of one Party, shall not preclude a Prorogation on the Motion of the other Party.

CXII. That the Clerks shall not receive into Process any Paper requiring the Signature of Counsel, without such Signature; and before marking any Paper as lodged, they shall examine the said Copy of the Interlocutor or Interlocutors, and Prorogation by Consent (where such has been given), above ordered to be prefixed; and shall not, in any Instance, receive and mark any Paper after the Lapse of the Day on which it is receivable: And if any Paper shall, through Error, or incorrect or insufficient Information, be received and marked by the Clerk, after the Time within which it is receivable, it shall be ordered to be withdrawn from the Process: Provided always, that when a Note is given in within the reclaiming Days, praying to be reponed against an Interlocutor of a Lord Ordinary, pronounced on Failure duly to lodge a Paper ordered or allowed to be given in within a limited Time, the Inner House Clerk shall not receive such Note, unless accompanied with the Paper ordered.

CXIII. That the Clerks in the Inner and Outer House, or their Assistants, shall mark the true Date of Lodgment on every Paper given in to Process, excepting such as they are hereinbefore prohibited to mark as lodged.

CXIV. Whereas the Clerks' Offices are shut in the Afternoon of *Saturday*, and it is not expedient that Processes or Papers should be lodged with said Clerks in the Parliament House, when they are engaged with the Busi-

*General  
Regulations.*

ss of the Court, and when they have no Means of com-  
ring the Inventories with the Process, and scoring the  
eceipts, or examining deliberately, whether the Papers  
ferred to them be presented in due Time, it is hereby en-  
ted and declared, That where any Paper is ordered or  
lowed to be given in, so that it would be necessary, by the  
resent Practice, to lodge it on *Saturday*, it will be suffi-  
ent that the Order for such Paper be duly implemented  
the course of the *Monday* following, and the Clerks are  
ereby authorized and required to receive and mark such  
apers accordingly: Provided always, that where the Court  
appens to rise on *Saturday*, either at the End of the  
ession, or for the Christmas Recess, this Regulation shall  
ave no Effect as to Orders falling, by the present Practice,  
o be implemented on such *Saturday*; and provided also,  
hat this Regulation shall not be construed to apply to Re-  
laiming Notes, or Notes for being reponed, or to Papers  
alling to be lodged in the Bill Chamber, and without Pre-  
udice to the Effect of any peremptory and special Order  
for the lodging of any Paper on *Saturday*, which the Court  
or Lord Ordinary may see cause to make.

may be lodged on  
*Monday* thereafter,

except a *Saturday*  
immediately be-  
fore a Vacation or  
Recess, etc.

CXV. And whereas it is enacted, by Section 10th of the  
Act, That the Pursuer shall have it in his Power to abandon  
the Cause, on paying full Expenses to the Defender, and  
to bring a new Action if otherwise competent, it is de-  
clared, That this applies only to the Case of the Pursuer  
abandoning his Cause before an Interlocutor has been pro-  
nounced, assolzieing the Defender in whole or in part, or  
leading by necessary Inference to such Absolvitor, after  
which it shall not be competent for him to do so, in regard  
to that Part of the Cause decided by said Interlocutor,  
either expressly or by necessary Inference; reserving, how-  
ever, to him any Remedy by a new Action, which may be  
competent to him under subsisting Regulations.

Pursuer abandon-  
ing his Cause, etc.

CXVI. That henceforth all Acts pronounced in the  
Inner House may be extracted immediately, without abiding  
the reading thereof in the Minute Book.

Reading in  
Minute Book partly  
dispensed with.

CXVII. That in order to prevent the Loss of Evidence  
by the Death of Witnesses, it shall be competent to the  
Lord Ordinary on the Bills, in Time of Vacation or Recess,  
on an Application, duly intimated Forty-eight Hours before,  
to the known Agent of the opposite Party, and on Produc-  
tion of a Process depending before a Lord Ordinary in the  
Outer House, or in the Inner House of either Division, or  
of a Summons before the Court of Session, duly executed,  
or of Letters of Suspension or Advocation, duly executed,  
or of the Copy of such Summons or Letters served on the

Lord Ordinary in  
Vacation may  
allow a Proof by  
old Witnesses, etc.

*General Regulations.*

Proof to lie in retentis.

Provision as to new Caution in Suspensions of liquid Obligations.

New Caution in Suspensions may be demanded if Cautioner has been sequestrated, etc.

General Provision for Difficulties occurring under New Forms.

Defender or Respondent, or of an Extract of such Letters under the Hand of the Extractor of the Signet ; the proper and legal Evidence of Execution being produced ; and after hearing Objections, if any shall be made, to grant Commission and Diligence for taking the Examinations of Witnesses whose Evidence, owing to great Age (not under Seventy Years), or to severe Indisposition, or to their intending to go abroad, and to remain abroad for a considerable Period, is in danger of being lost ; such Examinations to be sealed up by the Commissioner, and to lie in retentis, subject to future Orders of Court : Provided always, that such Examinations shall be limited to Matters of Fact, to be set forth in a correct Condescence for the Party making the Application, with or without Answers thereto : And provided also, that the Party making the Application shall state, and, if required, show to the Satisfaction of the Lord Ordinary, that he was unavoidably prevented from making it to the Lord Ordinary in the Cause, or to the Court, during Session.

CXVIII. That in every Process of Suspension of a liquid Obligation, in which Caution has been or may hereafter be found, it shall be competent to the Party entitled to the Benefit thereof, in case the Cautioner shall have been sequestrated or become notour Bankrupt, or have executed a Trust Disposition for behoof of his Creditors, or have called a Meeting of his Creditors to consider the State of his Affairs, or shall have died unrepresented, to present a Note, the same being previously intimated in common Form, stating the Circumstances which have emerged, and praying the Division in which the Proceeding may for the Time depend, to order new Caution to be found ; and the Division shall pronounce such Order thereon as the Justice of the Case shall require.

CXIX. That if any Difficulty shall occur, with regard to the Proceedings under the herein described Form of Process in the Outer House, or Bill Chamber, the Lord Ordinary may report the same verbally to the Division to which the Cause belongs, who may direct him how to proceed, or report to the other Division, if they see Cause ; and in case of any Difficulty occurring in either Division, the Lord President shall forthwith assemble a Quorum of the Court, to whom the same shall be orally stated, and the Court shall give Instructions how to proceed in the particular Case, and, if necessary, shall make an Act of Sederunt for the Regulation of such Cases in future.

And the Lords appoint this Act to be engrossed in the Sederunt Book, and printed and published in the usual Manner.

C. HOPE, *I.P.D.*

*Act of Sederunt explanatory of Section CXI. of the Consolidated Act of Sederunt.*—[Edinburgh, 19th November 1829.]

*Schemes of Locality.*

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THE Lords of Council and Session, and the Lord Chief Commissioner of the Jury Court, considering that, by their Act of Sederunt, of the 11th Day of *July* 1828, Section 111, it is provided, that the Time limited for giving in Papers may at any Stage of the Proceedings be prorogated, without the Necessity of any Application to the Court or Lord Ordinary, if both Parties consent, etc.; and farther, considering that this Provision has been viewed by Agents and Parties to apply to Papers ordered by the Inner House, whereby much Inconvenience to the Court, and Delay in the advising of Causes, have been occasioned, do therefore hereby enact and declare, That from and after this Date, it shall not be competent to the Parties or their Agents to grant Prorogation of Time for lodging Papers ordered by either Division of the Inner House, and that the aforesaid Section shall be applicable only to Papers ordered by any of the Lords Ordinary in the Outer House during Session, and by the Lord Ordinary on the Bills, acting under Authority of the Bankrupt Statute, during Vacation.

Time for lodging Inner House Papers cannot be prorogated of Consent.

And appoint this Act to be engrossed in the Books of Sederunt, and Copies thereof to be affixed on the Walls of the Parliament House.

(Signed) C. HOPE, *I.P.D.*

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*Act of Sederunt relative to Interim Schemes of Locality.*—[Edinburgh, 20th June 1838.]

WHEREAS Acts of Sederunt were passed on 5th *July* 1809, and 12th *November* 1825, relative to the Forms of Procedure in the Teind Court; and whereas certain Inconveniences have been experienced in Practice from the Provisions in said Acts relative to interim Schemes of Locality; Therefore, and to remedy the said Inconveniences, the Lords of Council and Session, Commissioners of Teinds, hereby enact and declare as follows:—

I. That if it shall appear, at any Period or Periods, that, under an interim Locality, prepared and approved of in Terms of former Acts of Sederunt, the Minister is unable, through Surrender of Teinds, or other Causes affecting its Efficacy, to operate Payment to any considerable Extent of the Stipend awarded to him, then and in that Case it shall

In certain Cases, new interim Scheme of Locality may be prepared.

*Schemes of  
Locality.*

be competent to the Lord Ordinary, on the Motion of the Minister or other Party interested, to appoint a new interim Scheme of Locality to be prepared, and also a State of Arrears remaining due from the Causes before specified, to be made up; and when the said rectified Locality and State of Arrears shall be approved of, the Lord Ordinary shall give Decreet for the Arrears, and the rectified Locality shall subsist as a new interim Rule of Payment of the Stipend then current, ay and until it be set aside by any other Rule which may afterwards be granted, on Cause shown.

Heritors may  
apply for Rectifica-  
tion of Locality,  
etc.

II. Under the Reservation after provided as to Expenses, it shall be competent to any Heritor or Heritors, the State of whose Teinds has been materially altered by Decreets of Valuation, or by other Circumstances, which may have occurred subsequent to the Approval of an interim Scheme, to apply for a Rectification of the Locality giving effect to the new or corrected State of the Teinds; and when the rectified Locality shall be approved of by the Lord Ordinary as a new Rule of Payment, he shall at the same Time appoint a State of Arrears to be prepared, if the State of the Process and the Interests of the Parties render this necessary, with Power to him to give Decreet for the same.

Expenses, how to  
be borne.

III. Where any new interim Scheme or Schemes shall be rendered necessary by Surrenders, or by Productions of Rights made by Heritors, or by any other unexpected Emergency occurring subsequent to the previous interim Scheme or Schemes, it shall be competent to the Lord Ordinary to lay the Expense of the new interim Scheme and States of Arrears, or such Part thereof as may appear proper, on the Party whose Surrender, or Productions or Proceedings as aforesaid, shall make such new interim Scheme necessary, unless such Heritor or Heritors shall be able to instruct a reasonable Cause to the contrary to the Satisfaction of the Lord Ordinary; in which last Case the Expense shall be defrayed by the common Agent.

Effect of Surren-  
der, etc.

IV. When a Surrender shall be made by a Bill of Suspension presented by an Heritor after the interim Decree, in place of a Minute of Surrender in the Process of Locality, it shall be competent to the Minister, as well as the common Agent, if the Surrender appear to him well founded, to accede to the same, and to give in a Minute in the Process of Locality, moving the Lord Ordinary to appoint a new interim Scheme at the Expense of the Heritor making the Surrender, without Prejudice to the Heritor's Answer to the same, in Terms of the 3d Section of this Act.

And the Lords appoint this Act to be recorded and printed.

C. HOPE, I.P.D.



*Extracts.*

*Act of Sederunt to regulate the Form of Extracts and other Matters.*—[Edinburgh, 24th December 1838.]

THE Lords of Council and Session, considering, That by Sections 1 and 9 of the Statute 1st and 2d Vict., c. 114, it is inter alia enacted, That in all Extracts of the Decrees and Acts of the several Courts therein mentioned, and also of Deeds or other Obligations or Documents duly registered, on which Execution may competently proceed, the Extractor shall, in Terms of the Schedules No. 1 and No. 6, annexed to the said Act, or as near to the Form thereof as Circumstances will permit, insert a Warrant to charge the Debtors, etc.; And that by Section 18 of the Statute 1st and 2d Vict., c. 118, the Court of Session has Power to give such Directions and Instructions from Time to Time, relative to the Preparation of Extracts, as shall seem fit;—Be it therefore enacted, in farther Explanation of the said Sections and Schedules, that where, in an Act or Decree in causa, or in a Decree of Registration, several Particulars or Prestations are decerned for and ordained to be implemented, it shall not be necessary, after reciting in the Extract the Words of the Decerniture or Obligation, to repeat in the Warrant the Particulars already enumerated and ordained; but it shall be sufficient to insert an Authority to charge the Debtor or Obligee to pay, implement, and perform the several Particulars (or to pay the several Sums, and implement and perform the several Acts and Particulars above enumerated), in all Points after the Form and Tenor of the said Decree, Act, Deed, or other Obligation or Document; all in Manner and to the Effect specified in Schedule A, hereunto annexed.

II. And whereas it appears that the Schedule No. 2, annexed to the Statute 1st and 2d Vict., Cap. 114, has been framed for those Cases in which the Execution of Charge is written on Paper apart from the Extract, and is not adapted to the Case of an Execution written or indorsed upon the Extract itself,—It is enacted, that when the Officer's Execution of Charge shall be so written upon the principal Extract, the Form of the Execution shall, as nearly as the Circumstances will permit, be in Terms of the Form Schedule B, annexed to this Act.

III. Whereas the 6th Section of the Statute 54th Geo. III., Cap. 137, narrates, that an Act passed in the Year 1681, Cap. 17, entitled, “*An Act concerning the Sale of Bankrupt's Lands,*” required certain Forms of Publication and Citation which in Practice have been found to be expensive and inconvenient,” it is therefore, by the said

Recitals.

33

Form of Execution indorsed on Extract.

Rescinded by A.S. 24 Jan 1839  
p 582

Certain Procedure enjoined in Processes of Sale.

*Extracts.*

Statute, enacted, inter alia, that the said recited Act be and the same is thereby in so far repealed, and full Power is given to this Court "to make Acts of Sederunt for abridging the Forms of Publication and Citation, and regulating the Proceedings in Processes of Sale, Ranking, and Division," etc.; Be it enacted, that the Practice of granting Warrant for Letters of Publication in Processes of Sale shall cease; and that, instead of the Intimation of Sales now in use to be made by virtue of such Letters at the Market Cross of *Edinburgh*, and Pier and Shore of *Leith*, it shall be deemed sufficient Intimation to all concerned, that at least Four Weeks' Notice of the Day of Sale shall be given once in the *Edinburgh Gazette*, and at the Edictal Citation Office in *Edinburgh*; and also, that the Roup and Sale shall be duly advertised in at least One of the Newspapers (if any so be) published in the County or Counties in which the Lands or Heritages to be sold lie, and also in Three of the Newspapers published in *Edinburgh*, Three Times, at least Three Weeks previous to the Day of Sale, and in such other Manner as the Court may direct.

Memorial and  
Abstract substituted for State of  
Proof.

IV. Whereas the Use of a prepared State of the Proof in an Action of Sale has been entirely superseded by the Introduction of the Memorial and Abstract of the Proof now printed and boxed for all the Judges, while the Preparation of the State frequently occasions Delay and Inconvenience in the Proceedings,—It is declared, that States of the Proof in such Cases shall be discontinued, and that the Memorial and Abstract shall, as at present, continue to be compared with the principal Proof and with the documentary Evidence produced in Process, without the Necessity of any prepared State.

Form of Extract  
in Decrees of  
Ranking.

V. In order to avoid the great Expense and Delay occasioned by the Practice of extracting Decrees of Ranking,—Be it enacted, That after the Expiry of Twenty-one Days from the Date of the Interlocutor of Ranking, the same shall be final and conclusive against all concerned, equally and to the same Extent and Effect as if said Interlocutor were extracted; and that it shall be sufficient to all Intents and Purposes, in preparing the Extract of the Decree of Division, to unite and incorporate the Decree of Ranking therewith; reserving nevertheless to any Party interested, if he shall think proper, to order an Extract of the Decree of Ranking at his own Expense.

Indorsement of  
Extracts.

VI. Considering that the Provisions contained in the Act of Sederunt 6th March 1829, so far as it relates to the Extracts of Decrees of this Court, have now become inapplicable and unnecessary,—It is enacted, that instead of affixing a Docquet in the Terms therein mentioned, the Officer

subscribing the Extract shall specify in Writing, on the last Page thereof, the Date at which the same was completed by his Subscription.

*Extracts.*

VII. The Offices of the Keeper of the Records of the Court of Session, and of Keeper of Edictal Citations, having been disjoined by the said Statute 1st and 2d Vict., c. 118; It is hereby declared, that all Citations against Persons furth of *Scotland* shall be made at the Office of the Keeper of Edictal Citations, notwithstanding that the Record Office of the Court of Session is mentioned in the said Schedule No. 1, annexed to the said Act 1st and 2d Vict., c. 114, and in the Act 6th Geo. IV., c. 120.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common Form.

D. BOYLE, *I.P.D.*

#### SCHEDULE A.

\* And the said Lords grant Warrant to Messengers at Arms, in her Majesty's Name and Authority, to charge the said *A. B.*, Defender, personally, or at his Dwelling Place if within *Scotland*, and if furth thereof, by delivering a Copy of Charge at the Office of the Keeper of the Record of Edictal Citations at *Edinburgh*, to make Payment of the foresaid Sum or Sums of Money, Principal, Interest, and Expenses, (or) to implement and perform the haill foresaid Obligations (or both to pay and perform as the Case may require), all in Terms and to the Effect contained in the Decree and Extract above written, and here referred to, and held as repeated brevitatis causa; and that to the said *C. D.* within (insert the appropriate Days, as) Fifteen Days, if within *Scotland*, and if furth thereof, within Sixty Days, next after he is charged to that Effect, under the Pain of Poinding and Imprisonment;† and also grant Warrant to arrest the said *A. B.*'s readiest Goods, Gear, Debts, and Sums of Money, in Payment and Satisfaction of the said Sum, Interest, and Expenses; and if the said *A. B.* fail to obey the said Charge, then to poind the said *A. B.*'s readiest Goods, Gear, and other Effects, and if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places in Form as effairs.

[*Extractor's Signature.*]

#### SCHEDULE B.

| Upon the | Day of | I                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          |        | Messenger at Arms (or Officer of Court), by virtue of the within Extract and Warrant, at the Instance of the within named and designed <i>A.</i> against the also within named and designed <i>B.</i> , passed, and, in her Majesty's Name and Authority, lawfully charged the said <i>B.</i> to make Payment of the within mentioned Sum or Sums of Money, Principal, Interest, and Expenses, or to implement and perform the haill Obligations within mentioned (or both to pay and perform as the Extract and Warrant may require), and that to the said <i>A.</i> , within |
|          |        | Days next after the Date of my said Charge, under the Pain of Poinding and Imprisonment. This I did by delivering to (or leaving for, as the Case may be) the said <i>B.</i> personally apprehended, a full Copy                                                                                                                                                                                                                                                                                                                                                               |

\* The Warrant need not be engrossed in the Record Copy of the Decree or Extract entered in the Books of Court.

† (If the Sum, or any Part thereof, be payable at a future Time, add, here, "the Terms of Payment being always first come and byegone.")

Recorded by C. V. V.  
 21 Jan 1889. p. 582.

of the within Extract (say "so far as incumbent upon him," in Case there be other Debtors or Obligants in the Extract), before and in presence of C. Witness to the Premises.

[Witness's Signature.]

[Officer's Signature.]

Cessio Bonorum.

*Act of Sederunt to regulate Proceedings in Processes of Cessio Bonorum before the Court of Session.*—[24th December 1838.]

THE Lords of Council and Session, considering, That by the Act of 1st and 2d Vict., c. 119, the Court is empowered to make Regulations for the purpose of carrying into Effect the Provisions of an Act passed 6th and 7th Will. IV., c. 56, entitled, "An Act for regulating the Process of Cessio Bonorum in the Court of Session, and for extending the Jurisdiction of Sheriffs in Scotland to such Cases,"—Do hereby enact and declare—

Form of Summons.

I. That Summonses of Cessio Bonorum raised before the Court of Session from and after the 12th Day of *January* 1839, shall set forth the particular Description of Diligence for Civil Debt against the Pursuer, on which he founds his Right to claim the Benefit of the Cessio, and when produced in Court, shall be accompanied by the necessary Evidence of the said Diligence so set forth: Farther, the Style of Summonses of Cessio Bonorum, and the Wills thereof, from and after the said Date, shall be varied in Form, or to the Effect of the Schedule hereto annexed, so as to adapt the Citation and ordinary Procedure, as nearly as possible, to the Provisions of the said Statute.

Intimation of Summons.

II. It being enacted by Section 4 of the Statute, that, in Processes of Cessio raised before the Sheriff, Debtors shall intimate the same in the *Edinburgh Gazette*, and by Letters sent through the Post within Five Days next after the Date of the said Gazette Notice, or otherwise, that they may have an Option to cite Creditors in Terms of Law;—And it being enacted by Section 11, that Pursuers of Processes of Cessio before this Court, shall publish a similar Notice in the Gazette as to the raising of such Processes, and have a similar Option as Pursuers have before the Sheriff, of citing the Defenders in Terms of Law, or of intimating the same to each Creditor, by Letters sent through the Post Office, without specifying the particular Time within which such Letters shall be sent;—It is declared, that the Letters shall be despatched through the Post (with the Postage paid), not later than Five Days after the Day of Publication in the Gazette.

III. When Pursuers of Processes of Cessio in this Court avail themselves of the Option given by Sections 4 and 11, to cite any of the Creditors in Terms of Law, the Citation shall be given not later than Ten Days next after the Date of the Publication in the Gazette; and the Defenders shall be cited to a Diet of Compearance at least Thirty Days subsequent to the Date of Publication in the Gazette.

*Cessio Bonorum.*

Citation of Creditors.

IV. In all Processes of Cessio, whether the Defenders or any of them shall be called on by Letter despatched as aforesaid, or by Citation in Terms of Law, the Summonses shall not be enrolled, nor shall any Procedure take place therein, until Thirty Days after the Date of Publication in the Gazette, without Prejudice to the Pursuer lodging in the Hands of the Court the Documents specified in the said Clauses Six Days prior to the Expiration of the Day of Compearance competent under the Statute.

Summons, when to be enrolled.

V. When a Pursuer shall fail to enrol his Summons for Fifteen Days next after the Day of Compearance, it shall be competent to any Creditor to put up Protestation against the Pursuer in the Minute Book kept in the Office of either of the principal Clerks of that Division to which the Pursuer shall have fixed his Cause, for not enrolling and insisting in his Action; and the like Procedure shall thereupon take place as in the Case of an ordinary Protestation in the Outer House.

Protestation for not enrolling.

VI. On the first *Tuesday* or *Friday* next, after the Expiration of the Diet of Compearance, the Summons may be enrolled in the Single Bill Roll of the Division of the Court to which the Cause belongs (the Name and Designation of the Pursuer being written in the said Roll at full length); and on being moved, it shall be ordered to the Summar Roll to be heard, *viva voce*, on the earliest Day convenient for the Court, and for the due Preparation of Parties.

Procedure in the Inner House.

VII. When the Cause is called in the Summar Roll, the Pursuer's Counsel, if there be no preliminary Objections to the Action, shall state the Circumstances in common Form; and if Appearance shall be made for the Creditors, the Counsel for the Parties shall be heard; and the Court shall pronounce such Judgment or Order as shall appear to them just.

Final Disposal of the Case.

VIII. When an Objection is made, that all the Creditors have not been called, the Objector shall at the latest, when the Cause is first called in the Summar Roll, give in a List signed by himself, his Counsel, or Agent, specifying the Names and Designations and Residences of the Creditors, so far as known, alleged to be omitted: And the Pursuer shall be authorized to call the Persons named in the said List by Citation upon the Summons, in virtue of a special

Objection that all Parties not called.

Cessio Bonorum.

Interlocutor to the Effect, to appear in the course of Six Days after Citation, if within *Scotland*,—or otherwise, to call the said Creditors, whether in *Scotland* or forth thereof, by Letter (Post paid) to compare within Fifteen Days after the Despatch of the Letter: And if it shall afterwards appear that those Persons, or any of them, were not Creditors, the Objector shall be found liable in the Expenses occasioned by his Objection.

Procedure where  
Bankrupt is under  
Sequestration.

IX. When the Process has been raised by a Bankrupt under Sequestration and not discharged, it shall be necessary, as heretofore, to produce in Process a Certificate under the Hands of the Trustee or Majority of the Commissioners, stating whether the Bankrupt has attended the Diets fixed for his Examination, and setting forth how far he has, in their Opinion, or to the best of their Knowledge and Belief, made a full and fair Surrender of his Means and Estate, and has in other respects duly complied with the Requisites of the Bankrupt Act; reserving the Effect of such Certificate to be considered by the Court.

Interim  
Protection.

X. Where the Pursuer of a Process of Cessio shall apply for interim Liberation from Prison, and Protection from Diligence under the 15th Section of said Act, he shall present a written Petition for that Purpose, setting forth the Amount of the Caution that he is willing to find, and the Name of his Cautioner; a Copy of which Petition shall be served upon the Agent or Agents for the opposing Creditors 48 Hours at least before being moved in Court, or heard before the Lord Ordinary; and the Court or Lord Ordinary shall thereafter, on hearing Parties, do therein as may seem just; the Defender always finding Caution to the Satisfaction of the Clerk or of the Judge, to such Amount as may be fixed, before Liberation.

Oaths, how to be  
taken.

XI. It being provided by Section 18 of the Act 6th and 7th *William IV.*, that Debtors on obtaining Decrees of Cessio, "shall make Oath in the same Terms as hitherto administered," which Provision cannot be literally enforced, in consequence of another Enactment in the said Statute (Section 16), whereby the Disposition formerly granted by Bankrupts may not now be required; it is therefore declared, that when Debtors take and subscribe an Oath or Affirmation, in the Form hereto annexed, being of the same Import and Effect as the Oath formerly administered, with such Variation only as the Provisions of the Statute render necessary, they shall be held to have sufficiently complied with the Provisions of the Statute.

Renewal of such  
Applications.

XII. It being provided by Section 17 of the Statute, that when Cessios have been refused in hoc statu, it shall be competent to the Debtor, at any Time thereafter, to make a

renewed Application, for the Benefit of the Cessio, provided that "the Debtor shall, in all Cases of a renewed Application, give Notice thereof in such Manner as shall be appointed either by the Court of Session or Sheriff respectively,"

—It is enacted, that the Debtor shall, in all Cases of renewed Application, give Notice to all his Creditors, by Letters addressed to each through the Post Office, and the Postage of which shall be paid; and the Case shall not be taken up till Twenty Days after the Despatch of all the said Letters; the Fact of the Despatch being established by Certificates satisfactory to the Court.

*Cessio Bonorum.*

XIII. When the Judgment of the Sheriff is brought under Review of the Court of Session, in Terms of the 8th Section of the Statute, the Delivery of a Copy of the Reclaiming Note as therein provided, shall be attested by the Execution of a Macer, Messenger at Arms, or Sheriff Officer, and One Witness; and the Clerks of Court are hereby prohibited from receiving the Reclaiming Note unless accompanied by such Execution: And on the next lawful Day after lodging the Note, if the Court shall be sitting, Copies thereof shall be boxed to the whole Judges, and on being moved in the Single Bill Roll, the Reclaiming Note shall be ordered to the Summar Roll, for such Day as will in the meantime afford sufficient Opportunity for Transmission of the Inferior Court Process (if the same shall not have been already lodged) to the Clerks of Court before the Advising.

Review of Sheriff's Judgment.

XIV. Copies of Reclaiming Notes from Inferior Courts, lodged during Vacation or Recess, and not finally disposed of by the Lord Ordinary on the Bills at the Commencement of the ensuing Session, shall be boxed to the Judges on the meeting of the Court, along with the Appendix (if any), and Copies of such Interlocutors as may have been pronounced by the Lord Ordinary.

Boxing of Reclaiming Notes, etc.

XV. When it shall appear that any of the Provisions of the Statute, or of this Act of Sederunt, have been omitted or not duly complied with by Pursuers of any Process of Cessio, the Process may be sisted till the Regulations have been duly complied with in all Points, if it shall appear to the Court, from the Nature of the Omission, that this can be still done consistently with Justice, and with the due Execution of the Statute.

Process may be sisted.

And the Lords appoint this Act to be engrossed in the Books of Sederunt, and to be printed and published in the usual Form.

D. BOYLE, *I.P.D.*

# SCHEDULE REFERRED TO IN SECTION I.

## FORM OF SUMMONS OF CESSIO BONORUM.

VICTORIA, &c.—To

Messengers at Arms, our Sheriffs in that Part, conjunctly and severally, specially constituted, Greeting—Whereas it is humbly meant and shewn to Us by our Lovite A., Merchant in B. Pursuer; That (*here set forth specifically under which Description of Diligence the Pursuer claims the Benefit of the Statute (§ 2,\*) in the same Manner as is directed to be done in Applications to the Sheriffs of Counties (§ 3).*) That the Pursuer is unable to pay his Debts, and is ready to surrender his whole Means and Estate for behoof of his said Creditors: That his Inability to pay his Debts has not been occasioned by Fraud, but has arisen solely from Misfortunes and Losses, to be particularly specified in the State of his Affairs, subscribed by himself, and to be produced in the Hands of the Clerk of Court: That the following is a List of the Pursuer's real or pretended Creditors, viz.: The said D.†; also E., Grocer in —; F., Spirit Merchant in —, etc. (*Here give the whole of the Names and Designations, and Places of Residence so far as known (§ 3).*) Therefore, after due Notice shall have been published in the *Edinburgh Gazette*, and Citation given in Terms of Law, or Intimation by Letters as required by the Statute; and upon the Pursuer giving a satisfactory State of his Affairs,—granting, if required by the Creditors, a Disposition omnium bonorum,—and making Oath or Affirmation in common Form, all in Terms of the Act of Parliament, the Lords of our Council and Session ought and should ordain that the Pursuer, if in Jail, be set at liberty from Prison; and ought and should prohibit and discharge all Judges, Messengers, and Officers of the Law, from putting any Diligence in Execution against his Person, and from troubling, molesting, and incarcerating him in Time coming for Payment of any Debts now due by him to the Persons above named: And farther, in the event of the Creditors above named, or any of them, opposing the present Process, the Defenders so opposing ought and should be decerned and ordained, by Decree of our said Lords, to make Payment to the Pursuer of the Sum of L. Sterling, or of such Sum, more or less, as our said Lords shall modify as the Expenses of the Process to follow hereon, all conform to the Statute, and Laws and Practice of Scotland, used and observed in the like Cases, as is alleged. Our Will is therefore, and we charge you, that on Sight hereof ye pass, and within Ten Days next after the Date of Publication in the *Gazette* as aforesaid, lawfully summon, warn, and charge the said Persons above named, personally, or at their respective Dwelling Places, or, if furth of Scotland, at the Office of the Keeper of the Record of Edictal Citations; that in case they, or any of them, shall be so advised, they may compare before the Lords of our Council and Session at *Edinburgh*, or where they may happen to be for the Time, on the Thirtieth Day next after the Date of Publication of the said *Gazette* Notice, with Continuation of Days, to answer at the Instance of the Pursuer in the Matter libelled; with Power, however, to the Pursuer, if so advised, in place of the Citation hereby authorized, to send Letters through the Post Office to each or any of them as above specified, containing a Copy of the said *Gazette* Notice, as authorized by Act of Parliament: That is to say, the said Defenders to hear and see the Premises verified and proved, and Decree and Sentence pronounced by the said Lords, conform to the Conclusions above written; or else to allege a reasonable Cause on the contrary, with Certification as aforesaid.—According to Justice, etc.

\* (1.) That he has been charged to pay a Civil Debt, and that a Warrant to imprison him has been issued (which Averment, it is required, § 8, shall be proved by Production of the Schedule of an "expired Charge").

(2.) That he is liable to Imprisonment under a Small Debt Decree (to prove which, a certified Copy of the Warrant from the Clerk of the Small Debt Court is required).

(3.) That he is in Prison for a Civil Debt (to be proved by Certificate of Jailor).

(4.) That he was in Prison for a Civil Debt, but has been liberated (also to be established by Production of the Jailor's Certificate).

† Supposed to be the Raiser of the Diligence.



## FORM OF OATH OR AFFIRMATION REFERRED TO IN SECTION XI.

At the Day of in presence of  
**Compeared A. B.**, who being solemnly sworn\* and examined, depones, That the State produced by him in Process is a true and correct State of his Affairs, to the best of the Deponent's Knowledge and Belief. Depones, That he has no Lands, Heritages, Debts, Sums of Money, Goods, or Gear belonging to him, other than what are specified in the said State, and in the Disposition executed by him in this Process (*if One shall have been required by the Creditors*). Depones, That he has made no (*other*) Disposition or other Conveyance of his Effects, or any Part thereof. Depones, That he has not put out of his Hands any Money, Goods, or Gear belonging to him; nor has he cancelled or put away any Writs or Documents. All which he depones to be Truth, as he shall answer to God.

*Act of Sederunt to regulate Proceedings in the Bill Chamber. Bill Chamber.*  
 —[24th December 1838.]

THE Lords of Council and Session, taking into Consideration, That by an Act passed in the First and Second Years of her present Majesty, c. 86, intituled, "An Act to diminish Delay and Expense in Advocations and Suspensions in the Court of Session in *Scotland*," they are empowered from Time to Time, to make such further Regulations by Act or Acts of Sederunt, as they may deem proper for carrying into effect the Purposes of said Act: That by an Act passed in the same Year of her present Majesty, c. 118, intituled, "An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in *Scotland*, and to reduce the Fees payable in those Courts," they are empowered from Time to Time, from and after the passing of said Act, to make such further Regulations by Act of Sederunt as they may deem meet, for the purpose of carrying into effect the Purposes of this Act, and of duly apportioning the Business, and regulating the Duties to be performed by the several Clerks and Officers of Court: And that by said Acts, certain Changes are made, as well in the Forms of Process in the Bill Chamber, as in the Number and Duties of the Clerks of the Bills;—Do therefore hereby enact and declare, That on and after the 1st Day of *January* 1839, the following Regulations shall take effect:—

I. With the view of providing for the proper Intimation of Notes of Advocation and Suspension presented in the Bill Chamber, in future, the Agent for the Complainer shall bring along with the Note, at the Time he first presents the same, a Copy thereof (which Copy, unless the Com-

Recital of 1 & -  
 V., c. 86.

1 & 2 V., c. 118.

Notes of Advoca-  
 tion, etc., to be  
 intimated.

\* Where it is an Affirmation, the necessary Alterations will fall to be made on this Style.

*Bill Chamber.  
Suspension.*

How Caution to  
be found.

plainer think it necessary, need not contain the annexed Reasons or State of Facts, and Pleas in Law); and the Clerk shall certify the presenting, sisting, or passing of the Note by a Certificate annexed to the said Copy thus prepared for Service.

II. It being enacted in Section Third of said Act, relative to Advocations from interlocutory Judgments, that on such Caution as is by the present Practice required, being certified as aforesaid to have been found in the Inferior Court in common Form, such Note of Advocation shall be received and marked by the Clerk in the Bill Chamber; and whereas by the present Practice, Caution in certain Cases is found in the Bill Chamber, while, by the said Statute, the Adjustment of Caution in all Cases of Advocation seems to be transferred to the Inferior Courts;—It is therefore declared, that Caution in all Notes of Advocation, whether from final or interlocutory Judgments, when competent, shall be found in the Inferior Court, and not in the Bill Chamber, and the Advocator in such Advocations from interlocutory Judgments as at present require Caution, as well as in Advocations from final Judgments, shall, along with his Note of Advocation, produce a Certificate from the Clerk in the Inferior Court, that Caution has been thereon found for Expenses: And it is further declared, that when any Notes of Advocation presented in the Bill Chamber, in Terms of the Third Section of said Act, shall be passed de plano, or without Answers, Intimation of the Interlocutor passing such Note, shall be made both to the Clerk of the Inferior Court and to the Agent of the opposite Party therein, or to the Party himself if he has no Agent; and a Certificate thereof shall be returned to the Bill Chamber before the Cause is transmitted to the Court of Session.

Suspensions may  
be presented on  
Consignation.

III. Whereas, by Section Fourth of said Act, it is enacted, that Judgments of any Inferior Court may be brought under Review of the Court of Session by Suspension, on Caution being found, and that certain Forms of Procedure are to be observed, when a Party is desirous to have such Decree, pronounced in foro, suspended without Caution, or on juratory Caution, but contains no Provision respecting Bills of Suspension on Consignation, while the later Act, 1st and 2d Victoria, c. 118, Sec. 14, affords Evidence that this Practice was understood as not abrogated;—It is therefore declared, that it shall still be competent to present Suspensions on Consignation, and that Consignation shall still be required in those Cases in which, by the present Practice, it is held necessary; the same Procedure being always observed in such Suspensions as is therein provided for Suspensions with-

out Caution, or on juratory Caution : And it is further declared, that in all Cases in which Consignation is to be made in the Bill Chamber, with the exception of Suspensions of Decrees in Absence pronounced in the Court of Session, the Sum to be consigned shall be paid into One of the incorporated Banks, therein to remain for the Disposal of the Court, and the Deposit Receipt thereof shall be lodged with the Clerk of the Process; and forthwith transmitted to the Repository of Deposit Receipts kept by the Clerks of Court.

*Bill Chamber.  
Review.*

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IV. In all Notes of Suspension, Suspension and Interdict, or Liberation, presented without Caution, or on juratory Caution, or on Consignation, it shall be competent to the Party, at any Time before such Note shall be advised upon Answers, to amend his Note, to the effect of offering juratory Caution, in the Case where no Caution has been previously tendered, or Consignation, or full Caution, as the Case may be, by lodging a Minute to that Effect, duly intimated to the Agent for the opposite Party; or he may afterwards correct the same, with special Leave of the Lord Ordinary or the Court, given after hearing both Parties on this Point; provided always, when Notes of Suspension are so amended, that it shall be in the Power of the Lord Ordinary and the Court to give any Order as to the Expenses occasioned by the Presentment of the Bill in its original Shape, that may appear to them to be just, with Power to their Lordships also to limit the Time for finding Caution or making Consignation, to such Period as shall appear to be proper in the Circumstances of the Case; and if any Note, as thus corrected, is afterwards refused for Want of the Caution or Consignation offered, no Second Note to the Lord Ordinary shall be competent, as allowed in certain other Causes by Section 7th of this Act.

Amendment of  
Note.

V. It being enacted, in Section Fourth of the said Act, that it shall be competent to reclaim to the Inner House against the Interlocutor passing or refusing a Note of Suspension; and it being enacted in Section Sixth that the Power to reclaim to the Inner House shall remain as at present; and as the Form of Review by Second Notes of Suspension to the Lord Ordinary, is not given or referred to in the Statute;—It is therefore declared, that Parties dissatisfied with the Interlocutor of any Lord Ordinary on a Note, advised either during the Sitting of the Court or in Vacation, shall lodge a Reclaiming Note to the Court against the same; provided always, that all Reclaiming Notes shall be intimated to the Agent of the opposite Party and Clerk of the Bills; and in Time of Session be duly marked and boxed within Fourteen Days from the Date of the Inter-

Review in the  
Inner House

*Bill Chamber.  
Review.*

locutor reclaimed against ; and in Vacation or Recess, that the same shall be intimated to the opposite Agent and the Clerk of the Bills within the said Fourteen Days, and duly marked and boxed on the First Box Day, or if no Box Day intervenes, on the First Sederunt Day thereafter : And it is further declared, that such Reclaiming Notes shall neither prevent the Clerk to the Bills from issuing the passed Note or a Certificate of Refusal, as the Case may be, nor hinder the Interlocutor submitted to Review, from being carried into effect by the opposite Party, unless the Lord Ordinary on the Bills shall, as heretofore, stay Proceedings, on special Cause shown by a Note for the Party, by prohibiting the Delivery of the Note or the issuing of the Certificate, on such Terms and Conditions, and during such Time, as he may judge reasonable, for enabling the Party to obtain a Review of the Interlocutor.

Record or other  
Papers to be ap-  
pended.

VI. When a Reclaiming Note is lodged against any Interlocutor in the Bill Chamber, passing or refusing a Note of Suspension, or against an Interlocutor remitting with Instructions, either in a Note of Suspension or of Advocation, where that is competent, there shall be appended to the Note, in the former Case, a Copy of the Note of Suspension, with the Statement of Facts and Note of Pleas in Law, and of the Answers thereto ; and in the latter Case, and in all Suspensions of final Judgments of Inferior Judges, a Copy of the Note of Suspension or Advocation, with the Statement of Facts or Reasons of Advocation, and Note of Pleas in Law and the Answers thereto, and also of the Summons and Defences or Record (if any), in the Inferior Court.

Second Notes of  
Suspension.

VII. When any Note of Suspension, or of Suspension and Interdict, or Liberation, shall, either during Session or Vacation, be refused, in respect that Caution has not been offered or found, or upon any Ground not on the Merits : and likewise where such Note shall have been passed, and a Certificate of no Caution or Consignation, or other Failure to implement any Condition of such Interlocutor, has been issued, it shall be competent (excepting only in the Cases specified in Section 4), on Payment of previous Expenses, to present a Second Note of Suspension, the Procedure upon which shall be the same as is provided in the said Act with regard to Notes of Suspension, and Suspension and Interdict, or Liberation.

When Interlo-  
cutor to take  
effect.

VIII. In all Notes of Suspension, when refused, the Certificate of Refusal shall not be issued till Forty-eight Hours after the Entry of the Refusal in the Minute Book ; and if the Notes are passed, the Interlocutor shall not take effect until Forty-eight Hours after such Interlocutor has

been entered in the Minute Book, except as a Continuance of the Sist or Interdict where the Interdict has been continued, and where Bills of Suspension and Liberation are passed, they may be carried into effect as heretofore: Farther, in Cases where Caution is to be found after the passing of the Note, the Interlocutor shall not take effect until Caution has been found.

*Bill Chamber.  
Jury Trial.*

Caution.

IX. When a Note of Suspension or Advocation has been passed on Caution, or on any Condition requiring to be implemented before the Interlocutor takes effect, the opposite Party shall not be entitled to a Certificate of no Caution or other Failure to implement such Condition, without intimating to the Party that he is to apply to the Clerk for the said Certificate; a Certificate of which Intimation shall be lodged with the Clerk; and the Clerk shall not give out the Certificate until the Expiry of Twenty-four Hours after such Intimation.

Certificates, how to  
be issued.

X. It being enacted, by the Judicature Act, 6th *Geo. IV.*, c. 120, Sec. 40, that Interlocutors allowing a Proof, in Cases in which the Claim exceeds L.40, may be advocated to the Court of Session, for the purpose of such Cases being tried by Jury; which Bills are at present passed at once without Answers and without Caution; and although there be no special Provision in the Act 1st and 2d *Victoria*, c. 86, for any Procedure in such Notes in future, different from that provided for other Advocations of interlocutory Judgments, yet as it does not appear from any Part of the last Statute, that the Enactment of the 6th of *Geo. IV.*, c. 120, Sec. 40, was meant to be in any respect altered or affected; —It is therefore declared, that the same Procedure, so far as it applies, shall be observed in all Cases advocated under the said Act of 6th *Geo. IV.*, c. 120, Sec. 40, as fit for Jury Trial, as is provided in the late Statute 1st and 2d *Victoria*, c. 86, with regard to Advocations of final Judgments, except that no Caution shall be required.

Procedure under  
§ 40 of Judicature  
Act.

XI. It being enacted, in Section First of the said Act 1st and 2d *Victoria*, c. 86, That within Fifteen Days after the Date of the Intimation of the Note of Advocation, in Cases of final Judgment it shall be competent to call, and thereafter to enrol, the Cause in the weekly printed Roll; and in Section Third of said Act it is also enacted, that in case the Lord Ordinary shall pass any Note of Advocation presented in the Bill Chamber, from an interlocutory Judgment, the Cause may, after the Expiry of Fifteen Days from the passing of the Note, be called, and thereafter enrolled in the weekly printed Roll; and similar Provisions are made in the Fourth and Fifth Sections of the Act, as to

Recital of 1 & 2  
V., c. 86, § 1.

*Bill Chamber.  
Record.*

Calling of Advoca-  
tions regulated.

*Sec AS. 5 Feb 1861  
§§ 546*

Protestation upon  
passed Note.

Transmission of  
Processes.

Duties of Clerks of  
the Bills.

calling and enrolling Suspensions after the Lapse of Fifteen Days; and as it is apparent that the Legislature intend that the calling and enrolling of all Advocations and Suspensions should be placed on the same Footing, and that none of the same should be called till after the Lapse of Fifteen Days from the Intimation or passing of the Note.—It is therefore declared, that Notes of Advocation for final Judgments shall not be called and thereafter enrolled in the weekly printed Roll, as aforesaid, until the Elapse of Fifteen Days after Intimation has been made to the opposite Parties; and that after the Elapse of the said Fifteen Days, it shall be competent to call, and thereafter to enroll such Advocations in like Manner as Letters of Advocation are at present called and enrolled.

XII. It shall be competent to the Respondent or Charged, in all Notes of Advocation or Suspension, after the Expiry of Fifteen Days after the Interlocutor passing the same shall have taken effect, to put up a Protestation in the Minute Book of the Court of Session, to force on the Discussion of the same, in like Manner as in ordinary Processes originating in this Court; and if he shall extract the said Protestation, he shall be at Liberty as at present, to apply to the Lord Ordinary on the Bills for his Expenses, both against the Principal and against the Cautioner.

XIII. When Notes of Advocation or Suspension have been passed by the Lord Ordinary on the Bills, such Note, along with the Answers, if lodged, and Productions, shall be transmitted from the Bill Chamber to the Office of the Clerk to the Process in the Outer House, at any Time after the Interlocutor passing the Bill shall have taken effect, that the Party or his Agent taking the Lead in the Process may require; and the Agent for the Party making the Transmission shall furnish the Assistant Clerk with the proper Note necessary to be given to the calling Clerk; whereupon the Assistant Clerk shall get the Case printed in the Calling List for the Week, and be afterwards responsible for the Writs transmitted.

XIV. It being enacted by the said Act 1st and 2d Victoria, c. 118, Sec. 14, that there shall be only Two Clerks of the Bills, who shall have the whole Charge of the Bill Chamber Department, and shall be responsible for the reputed Solvency of Cautioners, and for consigned Money, in like Manner as the Bill Chamber Clerks are at present:—It is declared, that the Clerks who have been appointed to the Bill Chamber shall divide or arrange, under the Direction or Approbation of the Lord Ordinary on the Bills, the Duties to be performed by each respectively; and they

may, with the Direction or Approbation of the Lord Ordinary, from Time to Time make such Alteration on these Arrangements as may be conducive to the more convenient Despatch of Business: Declaring always, that the said Clerks shall publish these Arrangements, and any Alterations thereof, by Notices put up on the Walls of the Bill Chamber, or otherwise, in such Manner as may best give Practitioners Information as to the same: And further declaring, that each Clerk shall only be responsible for the Caution accepted by himself—to the same Extent, and on the same Grounds only in which the Clerks are at present liable for Caution.

*Bill Chamber.  
Schedules.*

XV. The Procedure on all Bills presented on or prior to 31st *December*, shall be conducted through the Bill Chamber and Signet according to the present Forms; but the Fees of Court thereon shall only be leviable after 31st *December*, according to the Schedule in the late Statute, so far as applicable; and in Proceedings upon former Bills, for which no Fees are provided in the Schedule, there shall not be any Fees levied after the said 31st *December*; Reserving the Right of the Keepers or Officers of the Signet to levy the usual Fees on any Writs passing through their Office.

*Temporary  
Provisions.*

XVI. On and after the 1st of *January* 1839, all Notes of Advocation, Advocation and Interdict, Suspension, and Suspension and Interdict, shall be prepared in the Terms or general Form of the Schedules hereto annexed, or as nearly thereto as the Nature of the Case may admit of.

*Notes of Advoca-  
tion, etc., to be in  
Form scheduled.*

XVII. All former Acts of Sederunt at present subsisting in relation to Proceedings in the Bill Chamber, in so far as not hereby altered, shall continue in force.

*Continuance of  
former Acts.*

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common Form.

D. BOYLE, *J.P.D.*

## SCHEDULE REFERRED TO IN SECTION XVI.

### FORMS OF NOTES OF ADVOCATION.

#### I. FINAL JUDGMENT.

*(Prefix Interlocutors complained of.)*

Unto the Right Honourable the Lords of Council and Session, NOTE of ADVOCATION for *A.*, Merchant in *B.*, against *C.*, Merchant in *D.*

That in an Action at the Instance of the said \_\_\_\_\_ against the said  
depending before the Sheriff of *M.* (or other *Inferior Judge*),  
the prefixed Interlocutors were pronounced, which the Complainer now submits to the  
Review of your Lordships, being advised that the same are erroneous and contrary to

**Law.** That the Complainer has found Caution in common Form for Payment of the Expenses incurred in the said Process in the Inferior Court, and also for such Expenses as may be incurred in the Court of Session, conform to Certificate by the Clerk of the Sheriff Court herewith produced. (A)

May it therefore please your Lordships to advocate the said Action from the said Sheriff (or other Inferior Judge) to your Lordships, and to discharge the said Sheriff, and all other Inferior Judges, from further proceeding therein; (B) or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

*Note.*—If an Interdict is craved, add at (A), “and so far as regards the Interdict craved, is willing to find Caution in your Lordships’ Books.” And at (B) “and to interdict, prohibit, and discharge the said from”  
(here state the Terms of the Interdict wanted).

## II. INTERLOCUTORY JUDGMENT ALLOWING A PROOF.

In a Process in which the Claim exceeds L.40.

(Prefix the Interlocutor allowing a Proof.)

Unto the Right Honourable the Lords of Council and Session, NOTE of ADVOCATION for A., Merchant in B., against C., Merchant in D.

That the above Interlocutor was pronounced in an Action in which the said is Pursuer (or Petitioner), and the said Defender (or Respondent), depending before the Sheriff of M. (or other Inferior Judge). That as the Claim in the said Case exceeds in Amount the Sum of L.40 Sterling, it is competent to the Complainer to have the Cause advocated in Terms of the Act of Parliament, 6th Geo. IV., cap. 120, Sec. 40, and the Complainer is desirous to avail himself of the Provisions in the said Statute. (A)

May it therefore please your Lordships to advocate the said Action from the said Sheriff (or other Inferior Judge) to your Lordships, and to discharge the said Sheriff and all other Inferior Judges from farther proceeding therein, or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

*Note.* (A.)—If the Claim is not simply pecuniary, so as to render the Leave of the Inferior Judge necessary, the following Addition will be made on this Part of the Note. “That as the Claim, in the present Case, is not simply pecuniary, so that it does not appear from the Conclusions of the Summons, that it is above L.40 in Amount, the Complainer applied by Petition to the said Sheriff for Leave to advocate the said Cause, the Prayer of which Petition, after the usual Procedure, was granted, as is shown by the Certificate of the Clerk of the Sheriff Court to that Effect, herewith produced.”

## III. INTERLOCUTORY JUDGMENTS UNDER 50TH GEO. III., CAP. 112, SEC. 34.

(Prefix Interlocutory Judgment.)

Unto the Right Honourable the Lords of Council and Session, NOTE of ADVOCATION for A., Merchant in B., against C., Merchant in D.

That the above Interlocutor was pronounced in an Action at the Instance of the said against the said depending



before the Sheriff of *M.* (or other *Inferior Judge*): That the Complainer craves that he said Cause be advocated to your Lordships, on the Ground set forth in the Statement of the Reasons of Advocation and Note of Pleas in Law hereto annexed. (A)

May it therefore please your Lordships to advocate the said Cause from the said Sheriff (or other *Inferior Judge*) to your Lordships, to discharge the said Sheriff and all other *Inferior Judges* from farther proceeding therein, and to (*here state the Remedy sought*), or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

*Note*.—If the Leave of the Sheriff is necessary, and Caution has been found, add at (A), “That the Complainer applied by Petition to the said Sheriff for Leave to advocate the said Cause, the Prayer of which Petition, after the usual Procedure, was granted, and that the Complainer has found Caution, in common Form, for Payment of the Expenses incurred in the said Process in the *Inferior Court*, and also for such Expenses as may be incurred in the Court of Session, all conform to Certificate by the Clerk of the Sheriff Court herewith produced.”

#### FORMS OF NOTES OF SUSPENSION, ETC.

##### I. SUSPENSIONS OF DECREES OF INFERIOR COURTS, PRONOUNCED IN FORO UPON CAUTION.

Unto the Right Honourable the Lords of Council and Session, NOTE OF SUSPENSION for *A.*, Merchant in *B.*, against *C.*, Merchant in *D.*

That the Complainer has been charged (or is threatened to be charged) at the Instance of the said to make Payment, etc. (*here narrate the Charge*), most wrongously and unjustly.

That the Complainer is willing to find Caution acted in your Lordships' Books in common Form.

May it therefore please your Lordships simpliciter to suspend the said pretended Decree and Charge, and whole Grounds and Warrants thereof, or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

##### II. SUSPENSIONS OF DECREES IN ABSENCE PRONOUNCED IN THE COURT OF SESSION.

Unto the Right Honourable the Lords of Council and Session, NOTE OF SUSPENSION for *A.*, Merchant in *B.*, against *C.*, Merchant in *D.*

That the Complainer has been charged (or is threatened to be charged) at the Instance of the said to make Payment, etc. (*here narrate the Charge*), most wrongously and unjustly, the foresaid Decree having been pronounced in Absence of the Complainer, and without his being heard on his Defences against the same.

That the Complainer has consigned in the Hands of the Clerk the Sum of L. being the Expenses decreed for in the said Decree, with L. as the Dues of Extract.

May it therefore please your Lordships simpliciter to suspend the said Decree in Absence, and Charge, and whole Grounds and Warrants thereof; and to repon the Complainer against the same; or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

## III. ALL SUSPENSIONS NOT INCLUDED IN THE ABOVE TWO HEADS.

Unto the Right Honourable the Lords of Council and Session, NOTE of SUSPENSION for A., Merchant in B., against C., Merchant in D.

That the Complainer has been charged (or, *is threatened to be charged*) at the Instance of the said \_\_\_\_\_ to make Payment, etc. (*here narrate the Charge*). (A) most wrongously and unjustly, as will appear to your Lordships from the annexed Statement of Facts and Note of Pleas in Law.

That the Complainer is willing to find Caution, acted in your Lordships' Books in common Form, (or, *to find juratory Caution, complying with the Requisites of the Act of Sederunt, which is all that the Complainer in his present Situation and Circumstances is able to find*—or, *is willing to consign the Sum charged for*—or, *that the Complainer considers, that, in the whole Circumstances of the Case, he is entitled to have this Note passed without Caution or Consignation*).

May it therefore please your Lordships simpliciter to suspend the said (pretended Decree and) Charge, and whole Grounds and Warrants thereof (B), or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

Note.—If a Liberation, add at (A), "and the said Complainer was, upon the Day of \_\_\_\_\_, incarcerated in the Tolbooth of \_\_\_\_\_ where he has remained ever since;" and at (B), "and to grant Warrant for charging the Magistrates of the said Burgh of \_\_\_\_\_ to set him at Liberty." If there has been a Pounding or any other Proceeding rendering an Interdict necessary, narrate such Proceedings as in the present Forms at (A), and add a Prayer for Interdict at (B).

## IV. INTERDICTS.

Unto the Right Honourable the Lords of Council and Session, NOTE of SUSPENSION and INTERDICT for A., Merchant in B., against C., Merchant in D.

That the Complainer is under the Necessity of applying to your Lordships for Suspension and Interdict against the said Respondent, as will appear to your Lordships from the annexed Statement of Facts and Note of Pleas in Law.

That the Complainer is willing to find Caution, acted in your Lordships' Books, for whatever Damage or Expense the said Respondent may sustain, in case it shall be found by your Lordships that he is liable for the same (or, *to find juratory Caution, complying with the Requisites of the Act of Sederunt, which is all that the Complainer in his present Situation and Circumstances is able to find*—or, *that the Complainer considers that, in the whole Circumstances of the Case, he is entitled to have this Note passed, and Interdict granted, without Caution or Consignation*).

May it therefore please your Lordships to suspend the Proceedings complained of, and to interdict, prohibit, and discharge the said Respondent from (*here state the specific Interdict wanted, and that not by Reference to the Statement of Facts annexed to the Note*), or to do otherwise in the Premises as to your Lordships shall seem proper.

According to Justice, etc.

(Signed by Agent.)

*Enrolment  
of Causes, etc.*

*Act of Sederunt to regulate the Enrolment of new Causes and other Arrangements of Business.*—[24th December 1838.]

§ VI. With reference to the Remit of one or more Causes to another Cause or contingentiam, and keeping in view the Provision of the Act 48th Geo. III., cap. 151, providing that the Cause first brought, and depending before either Division of the Court, or before a Lord Ordinary in the Outer House, shall be deemed the previous or leading Process,—It is specially declared, that where such contingent Causes shall be brought for the first Time before Two or more Lords Ordinary, in the same weekly Rolls of new Causes, the Cause enrolled before the senior Lord Ordinary shall (provided the Enrolment is regular) be deemed the first or leading Process; and the other Lords Ordinary shall remit the contingent Causes to the said senior Judge; and the Cause or Causes so remitted, whether conjoined with the first or previous Cause or not, shall be held thenceforward as Causes marked for the same Division of the Court, with the Cause enrolled before the senior Judge. Farther, when Two or more Causes having a Contingency with each other, are enrolled before the same Lord Ordinary for the first Time in his weekly Roll, but marked for different Divisions, if the Parties cannot agree as to the Division to which the whole Causes are to belong, the Lord Ordinary shall determine the same; and his Lordship's Order on that Matter shall be final, and not subject to the Review of either Division of the Court.

Provision in certain Cases of Remits or contingentiam.

§ XII. When Reclaiming Notes are lodged against the Interlocutor of a Lord Ordinary in an Advocacion, or in a Suspension of any Decree or Decrees of Inferior Courts, there shall be appended thereto, or boxed therewith, a printed Copy of the Notes of Advocacion or Suspension, as the Case may be, and of the Summons, Defences, and Record in the Inferior Court, together with the additional Record, if any, and Notes of Pleas made up in this Court: And as it is provided by Section 77th of Act of Sederunt, 11th July 1828, that when any of the Proceedings or Documents in a Cause have once been printed and boxed to the Judges, it shall not be necessary at any subsequent Stage of the Cause to box the same again, but only to refer to them; and this Regulation having been found inconvenient, after a Lapse of Time;—It is therefore enacted, that this Regulation shall be held to apply only to Proceedings or Documents which have been boxed within Two Years previous to the Date at which they shall be again referred to;

In Advocacions, etc., Record, etc., to be appended to Reclaiming Note.

Exception.

*Enrolment.  
Extracts.*Transmission  
of extracted  
Processes.Continuance of  
Acts.

after which, printed Copies of the former Proceedings shall be boxed or furnished to the Judges of the Inner House, before which the Cause may be again brought.

§ XV. When any Deeds, or Steps or Warrants of extracted Processes deposited with the Lord Clerk Register, are required in Processes depending before the permanent Lords Ordinary, it shall not be necessary to apply to the Inner House for a Warrant for the Transmission of such Documents; but the Lords Ordinary before whom the Causes depend may grant such Warrant, when the Productions appear to them to be necessary for the Ends of Justice; provided always, that the Motion is intimated to the opposite Party, and also to the said Lord Clerk Register, or his Deputy, Two Days before the Motion, and that no relevant Objection is stated thereto; and the said Warrant shall be certified by the Clerk, and delivered to the Lord Register or his Deputy at receiving up the Documents.

§ XVI. All prior Acts of Sederunt now in observance, in so far as not inconsistent with the said Statute, and with the Regulations now made in pursuance thereof, shall continue in full Force.

And the Lords appoint this Act to be engrossed in the Books of Sederunt, and to be printed and published in the usual Form.

D. BOYLE, *I.P.D.*

*Act of Sederunt respecting Section 2d of Act of Sederunt, relative to the Form of Extracts, passed on 24th December 1838.—[Edinburgh, 24th Jan. 1839.]*

Repeal of § 2 of  
A. of S. 24 Dec.  
1838.

THE Lords of Council and Session being advised that certain Inconveniences will arise from the general Use of Schedule B, annexed to the Act of Sederunt relative to the Forms of Extract passed on 24th December last, do hereby enact and declare, that Section 2d, authorizing Schedule B thereto annexed to be used, shall be rescinded, and Messengers at Arms and others are directed in all Cases to use the Form of Execution annexed to the Act 1st and 2d Victoria, cap. 114, relative to personal Diligence; and appoint this Act to be inserted in the Sederunt Book, and published in the Minute Book of Court.

C. HOPE, *I.P.D.*

*Exchequer.  
Bill Chamber.*

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*Act of Sederunt to regulate the Rotation of Judges in the Court of Exchequer, and in the Bill Chamber during Vacation.*  
—[Edinburgh, 8th August 1839.]

THE Lords of Council and Session, taking into their Consideration, that, by an Act passed in the Second and Third Year of her Majesty Queen Victoria, Chapter 36, intituled, "*An Act to regulate the Duties to be performed by the Judges in the Supreme Courts of Scotland, and to increase the Salaries of certain of the said Judges,*" the said Lords are empowered and required to make Acts of Sederunt to regulate the Rotation according to which certain of the Judges shall officiate in the Bill Chamber and the Court of Exchequer, and for carrying into effect the other Purposes of the said Act,—Do hereby enact and declare, and it is enacted and declared accordingly,—1. That the Six existing Judges of the Court of Session who are not also Judges of the Court of Justiciary, and all who shall hereafter be such Judges of the Court of Session and not of Justiciary, shall, on and after the 12th Day of the present Month of August 1839, and during all future Autumn and Spring Vacations, and during the Christmas Recess, each officiate successively, or by Turns, in the Bill Chamber, and transact the whole judicial Business thereof, for the Period of Fourteen Days; the senior of the said Six Judges officiating for the first Period of Fourteen Days, or that beginning on the 12th Day of August current, and being succeeded, on the Expiration of the said Period, by the next senior of the said Judges; and so on continually, in the Order of Seniority, till otherwise provided by Parliament or future Act of Sederunt: Provided always, that, in the event of the Death or Resignation of any of the said existing Six Judges, or of the Appointment of any of them to officiate in the Court of Justiciary, the Judges appointed to succeed to those who may die or resign, and the Judges who may be relieved of their Duties in the Court of Justiciary, shall begin to officiate in the Bill Chamber at the Commencement of the First Period of Fourteen Days which shall occur after their Appointment as Judges, or after their being relieved of their Duties in the Court of Justiciary.

Rotation of  
Judges in Bill  
Chamber.

II. And it is further enacted and declared, That the whole Duties of Barons, or Judges in the Court of Exchequer, shall hereafter be discharged by Two of the said Six Judges, for the Period of One Year from and after the said 12th Day of the current Month of August; and on the Expiration of the said Year, then, for a like Period of

Judges in  
Exchequer.

*Exchequer.  
Bill Chamber.*

One Year, by other Two of the said Judges; and so on continually, by Two of the said Six Judges, for annual Periods, till otherwise provided by Parliament, or future Acts of Sederunt of this Court.

Interim Arrangements.

III. And it is further enacted and declared, That the Two Judges who shall officiate as such Barons of Exchequer for the First Year, shall be Lord *Cuninghame* and Lord *Jeffrey*; and that at the End of the said Year, they shall be succeeded in the said Duties by Lord *Fullerton* and Lord *Gillies*; and they again, and for the Third Year, by Lord *Glenlee* and Lord *Murray*: Provided always, that, in the event of the Death, Resignation, or Appointment to the Court of Justiciary of any of the said Six Judges, the Duties and Term of Service in the Court of Exchequer which would have fallen upon the Judges so dying, resigning, or being appointed to the Court of Justiciary, shall be laid upon such Judges as shall have been appointed to succeed them, in case of Death or Resignation, or as shall have been relieved from their Duties in the Court of Justiciary, in case of the Removal of any of the said Judges to that Court.

Sittings in Outer House.

IV. And it is farther enacted and declared, That the Sittings of the Lords Ordinary appointed by the 9th Section of the said Act, to take place from and after the 31st of *October* to the 12th *November*, and from and after the 11th to the 20th of *March*, shall be held on the same Days and in the same Manner as the other Sittings of the said Lords Ordinary in the Course of the Session.

Reclaiming Days.

V. And it is farther enacted and declared, That the Twenty-one Calendar Days now allowed for reclaiming against the Interlocutors of Lords Ordinary, shall run and be calculated, as to all Interlocutors pronounced during the additional Sittings in *November* and *March* appointed by the said Act, from and after the actual Date of such Interlocutors.

Calling Summonses, etc., in Vacation.

VI. And whereas, by the 13th Section of the said Act, the said Lords are empowered to make Regulations by Act or Acts of Sederunt, for allowing Summonses to be called at either of the Box Days in the Autumn Vacation, and making Defences returnable at the Second Box Day, or at the Meeting of the Court in *November*, they hereby enact and declare, That from and after the passing of this Act of Sederunt, all Summonses of which the induciæ shall have run, may be called upon either of the said Box Days, in like Form and Manner as they are now called weekly in Time of Session; the Week in which a Box Day occurs, being to this Effect to be held as a Session Week; and such Callings to be made and followed out accordingly, in

all respects as is provided for Callings in Time of Session, by the 26th, 27th, and 28th Sections of the Act of Sederunt of 11th July 1828.

*Teind Court.*

VII. And it is farther enacted and declared, That when Summonses are thus called on the First Box Day, the same shall be returned, with Defences, on or before the Second Box Day; and when they are so called on the Second Box Day, they shall be returned, with Defences, on or before the first Day of the Sittings of the Lords Ordinary in November; and if the Defences are not returned on the said Days respectively, Warrant to enrol shall be granted, and the Case proceeded with in all respects as is provided by the said Act of Sederunt of 11th July 1828 (and especially by the 31st, 32d, 33d, and 34th Sections thereof), as to Cases in which Defences are not lodged within Twelve Days after Callings in the Time of Session.

Defences, when to be returned.

(Signed) C. HOPE, *I.P.D.*

*Act of Sederunt to regulate the Form of Extracts of Decrees of Locality and Warrants of Charge.*—[Edinburgh, 4th March 1840.]

WHEREAS, by the Act 1st and 2d Victoria, cap. 118, it is provided in Section 27, that the Provisions made by the Act 50th Geo. III., cap. 112, for abridging the Form of extracting Decrees of the Court of Session, should be extended to Acts and Decrets of the Commissioners of the Court of Teinds: And whereas it was enacted by a prior Statute (1st and 2d Vict., cap. 114, Sec. 1), that Extracts of the Decrees of the Court of Teinds should contain a Warrant to charge, arrest, poind, and imprison: And that by Section 8 of the same Statute, it is provided, that where an Extract had been issued before the Commencement of the said Act, it should be competent for the Person in whose Favour such Extract had been issued, or the Person having Right thereto, to obtain an Extract in Terms of the said Act, or a Warrant subjoined to the former Extract in Terms of a Schedule therein referred to; and whereas it is expedient that the Forms of such Decrets and Warrants of Charge should be abridged and adjusted under Authority of the Court, in Terms of the Statute;—

Therefore the Lords of Council and Session, Commissioners appointed for the Plantation of Kirks and Valuation of Teinds, enact and declare, That from and after the passing of this Act *Decrets of Locality and Warrants of Charge* shall be issued, in the Form and to the Effect of the Schedules hereto annexed, as nearly as the Circumstances of each Case may admit of; reserving always Right to Parties so advised, to take full Extracts, according to the ancient Form, when they require the same, in Terms of the Statute; provided also, that the Dues of Extract, in whatever

Form the same may be given out, shall be charged in precise Conformity with the Statute.

And the said Lords appoint this Act to be recorded, printed, and published, in usual Form.

C. HOPE, *I.P.D.*

### SCHEDULE, No. I.

#### FORM OF EXTRACT, DECREET OF MODIFICATION AND LOCALITY.

At *Edinburgh*, the \_\_\_\_\_ Day of \_\_\_\_\_, sitting in Judgment, the Lords of Council and Session, Commissioners appointed for Plantation of Kirks and Valuation of Teinds, in the Process of Augmentation, Modification, and Locality, raised and pursued at the Instance of the Reverend \_\_\_\_\_ Minister of the Gospel, of the Parish of \_\_\_\_\_ against the Officers of State, as representing her Majesty, for the Interest of the Crown, and also against the whole Heritors, Titulars, Tacksmen, Liferenters, and others, Intromitters with the Rents and Teinds of the said Parish, modified, decerned, and ordained, and hereby modify, decern, and ordain, the constant Stipend and Provision of the Kirk and Parish of \_\_\_\_\_, to have been for Crop (or last Half of Crop), and Year Eighteen hundred and \_\_\_\_\_ yearly, since and in Time coming, such a Quantity of Victual, Half Meal, Half Barley, in Imperial Weight and Measure, as shall be equal to \_\_\_\_\_ Chalders of the late Standard Weight and Measure of *Scotland*, payable in Money, according to the highest Fairs Prices of the County annually, and that for Stipend, with \_\_\_\_\_ Sterling for furnishing the Communion Elements. Which modified Stipend, and Modification for furnishing the Communion Elements, the said Lords decern and ordain to be yearly paid to the Pursuer, and his Successors in Office, Ministers serving the Cure of the said Kirk and Parish, by the Titulars and Tacksmen of the Teinds, Heritors and Possessors of the Lands, and others, Intromitters with the Rents and Teinds of the said Parish, out of the first and readiest of the Teinds, Parsonage and Vicarage, of the same, conform to the Division and Locality following, viz. (the Locality to be taken in here in *Figures*, and then say) beginning the First Term's Payment thereof, for the said Crop and Year Eighteen hundred and \_\_\_\_\_, betwixt Yule and Candlemas, after the Separation of the Crop from the Ground, or as soon thereafter as the Fairs Prices of the County are struck, and so forth yearly and termly in all Time coming. The said Lords, as Commissioners foresaid, also decerned and ordained, and hereby decern and ordain, the whole Heritors of the said Parish, to make Payment to \_\_\_\_\_ common Agent in the Process, of their respective Shares of the Sum of L. \_\_\_\_\_ Sterling, being the Amount of the Account of the taxed Expenses incurred by him in obtaining the Decree of Locality; as also of their respective Shares of the Sum of L. \_\_\_\_\_ Sterling, being the Expense of extracting this Decreet and proportioning the Expenses among the Heritors, including therein Two Pounds Sterling of Fee Fund Dues; making in whole L. \_\_\_\_\_ Sterling, and that in Proportion to their several Teind Rentals in Process, and Scheme of Division made up and certified by the Clerk as relative hereto. And the said Lords of Council and Session, Commissioners foresaid, grant Warrant to Messenger at Arms, in her Majesty's Name and Authority, to charge the Titulars and Tacksmen of the Teinds, Heritors, Feuars, Farmorers, Wadsetters, Liferenters, Factors, Chamberlains, Tenants, Occupiers and Possessors of the Lands, and others, Intromitters with the Rents and Teinds of the said Parish of \_\_\_\_\_ Defenders, personally, or at their respective Dwelling Places, if within *Scotland*, and if furth thereof, by Delivery of a Copy of Charge at the Office of the Keeper of Edictal Citations at *Edinburgh*, to make Payment of the foresaid Stipend and Communion Element Money, each of them for his or her own Part and Portion thereof, conform to the Division and Locality above set down, and that at the Terms of Payment above expressed,—in Terms and to the Effect contained in the Decreet of Locality and Extract above written, and here held as repeated brevittatis causa; as also, of their respective Proportions of the foresaid Sums of Expenses, and Dues of Extract, conform to the



Scheme of Division above referred to; and that to the Reverend Pursuer, and his Successors in Office, and to the said

common Agent, respectively, within Ten Days, if within *Scotland*, and, if forth thereof, within Sixty Days after they are respectively charged to that Effect, under the Pain of Poinding and Imprisonment, the Terms of Payment of said Stipend being always first come and bygone: And also grant Warrant to arrest the foresaid Defenders' readiest Goods, Gear, Debts, and Sums of Money, in Payment and Satisfaction of their respective Portions of Stipend and Communion Element Money, and also of their respective Proportions of the Expenses foresaid, and Dues of Extract: And if the said Defenders fail to obey the said Charge, then, after the said Charge is elapsed, to poind their readiest Goods, Gear, Debts, and other Effects; and if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places, in Form as effairs.

#### SCHEDULE, No. II.

FORM OF WARRANT OF CHARGE, IN TERMS OF STATUTE 1ST AND 2D VICT., CAP. 114, SECTIONS 1 AND 8.

And the said Lords, as Commissioners foresaid, grant Warrant to Messengers at Arms, in her Majesty's Name and Authority, to charge the foresaid Titulars and Tacksmen of Teinds, Heritors, Feuars, Farmors, Wadsetters, Liferenters, Factors, Chamberlains, Tenants, Occupiers and Possessors of the Lands, and others, Intromitters with the Rents and Teinds of the said Parish of personally, or at their respective Dwelling Places, if within *Scotland*, or, if forth thereof, by delivering a Copy of Charge at the Office of the Keeper of the Record of Edictal Citations at *Edinburgh*, to make Payment of the foresaid Stipend and Communion Element Money, each of them for his or her own Part and Portion thereof, conform to the Division and Locality inserted in the grand Decerniture of the foregoing Decreet, and that at the Terms of Payment therein expressed,—all in Terms and to the Effect contained in the Decreet and Extract above written, and here referred to, and held as repeated *brevitatis causa*; and that to the Reverend now Minister of the said Parish of

within Ten Days, if within *Scotland*, and, if furth thereof, within Sixty Days after they are respectively charged to that Effect, under Pain of Poinding and Imprisonment, the Terms of Payment being always first come and bygone: And also grant Warrant to arrest the foresaid Defenders' readiest Goods, Gear, Debts, and Sums of Money, in Payment and Satisfaction of their respective Portions of the foresaid Stipend and Communion Element Money; and if the said Defenders fail to obey the said Charge, then after the said Charge is elapsed, to poind their readiest Goods, Gear, and other Effects; and if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places, in Form as effairs.—Given at *Edinburgh*, the  
Day of One thousand eight hundred and

*Act of Sederunt regulating Proceedings in Jury Causes.—*  
[*Edinburgh*, 16th February 1841.]

*Jury Causes.*

THE Lords of Council and Session, considering, that, by the Act of 1st Will. IV., cap. 69, intituled, "An Act for uniting the Benefit of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain Alterations and Reductions in the judicial Establishment of *Scotland*," it was enacted, That from and after the 5th *October* then next, 1830, the Jurisdiction for Trial by Jury

Jury Causes.

in Civil Causes should be united with, and should form Part of, the ordinary Administration of Justice in the Court of Session in *Scotland*, and the Trial of Causes by Jury should take place as therein directed: And it was further enacted, That all Rules and Regulations in Observance in the Jury Court at the Time of the Union of Jury Trial in Civil Causes with the Administration of Justice in the Court of Session, established and enforced by Act of Sederunt, should continue and be observed as Rules and Regulations applicable to the Court of Session, after such Union until the same should be altered by Acts of Sederunt: And it is thereby provided, That the said Court of Session should have full Power and Authority by Acts of Sederunt to make all Regulations for duly adapting the Forms previously observed in the Jury Court to the Proceedings in the Court of Session, and afterwards to alter and amend such Regulations when necessary: And farther considering, That by an Act passed in the last Session of Parliament 1st and 2d *Victoria*, cap. 118, intituled, "An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session, and Court of Commissioners for Teinds in *Scotland*, and to reduce the Fees payable in those Courts," it is enacted, That certain Duties which have hitherto been discharged by the Clerks of the Jury Court shall in future be discharged by the principal Clerks of Session in the Inner House, and by the Depute and Assistant Clerks of Session in the Outer House, respectively; and that by Act of Sederunt, dated 24th *December* 1838, the said Lords made certain Regulations for carrying into Effect the Directions of the said last mentioned Act of Parliament: And whereas it is expedient to make the Regulations in regard to all Causes connected with Trial by Jury, which are at present in Observance, applicable to the Court of Session, whose Jurisdiction is now extended by the said first mentioned Act of Parliament to Jury Causes; Therefore the said Lords of Council and Session do hereby repeal the whole Acts of Sederunt now in force, relating to the Preparation and Trial of Jury Causes; and they do hereby enact and declare, That, from and after

the following Regulations shall take effect, and be observed in the Inner and Outer House in all Matters connected with Trial by Jury.

[By virtue of § 16 of 1 W. 4, c. 69, and § 61 of A. of S. 29 Nov. 1825, the practical Forms of 3 July 1823 are retained.]

Proceedings in Jury Causes in Outer House, before Record is closed, to be the

# I. PROCEEDINGS BEFORE THE LORDS ORDINARY PREVIOUS TO THE CAUSE BEING REMITTED TO THE ISSUE CLERKS.

## I. That in all Causes, whether proper Jury Causes under

the Act 59th *Geo.* III., cap. 35, sec. 1, or 6th *Geo.* IV., cap. 120, sec. 28, or Causes remitted by a Lord Ordinary, before the Record is closed, to be tried by Jury, the Regulations as to enrolling the Cause, and the Preparation of the Record, shall be the same, so far as applicable, as in other Court of Session Causes.

#### *Issues.*

same as in Court of Session Causes.

## II. PROCEEDINGS RELATIVE TO THE PREPARATION AND FINAL ADJUSTMENT OF THE ISSUES.

II. That in Terms of 59th *Geo.* III., c. 35, Section 7, it shall be competent and lawful for the Lord Ordinary, or for either of the Divisions of the Court of Session, in all Processes other than the enumerated Jury Causes, when it shall appear to them expedient for the Administration of Justice, to prepare and settle an Issue or Issues, or remit the Cause to the Issue Clerks for that Purpose.

Either of the Divisions may settle and adjust Issues, or remit to the Issue Clerks to prepare and settle such Issues.

III. That when a Cause is remitted to the Issue Clerks, Notice shall be given by the Assistant Clerk to the Parties' Agents to attend at the Issue Chambers with their Counsel, at a Time appointed, when the Terms of the Issues shall be discussed and settled. That if either of the Parties do not attend at the Time so appointed, the Issues may be prepared and settled in the Absence of such Party; or if the Preparation of the Issues is delayed by such Absence, without sufficient Cause being shown to the Lord Ordinary, or in the event of any Application being made for delaying the Preparation of the Issues, the Party may be subjected by the Lord Ordinary in the Expense occasioned by such Delay.

Preparation of Issues by Issue Clerks.

IV. That the Hours of Attendance in the Issue Chambers shall commence at Ten o'clock in the Morning, that the Counsel may attend them on the Business of the Issues before the meeting of the Court in its Divisions.

Hours of Attendance at Jury Chambers.

V. That when an Issue or Issues are finally settled by the Lord Ordinary, the Record, if still open, shall be ordered to be closed, and the Lord Ordinary shall pronounce an Interlocutor, approving of the Draft of such Issue or Issues. That after the Expiration of Ten Days from the Date of the said Interlocutor, the Issue or Issues shall be engrossed and signed by the Lord Ordinary; and the Issue or Issues so signed, together with the whole Process, shall be transmitted to the Office for Jury Causes in the Register House.

The Lord Ordinary shall pronounce an Interlocutor approving of the Issue or Issues, which shall, in Ten Days thereafter, be engrossed and signed.

VI. That if either of the Parties be dissatisfied with the Draft Issue or Issues so approved of by the Lord Ordinary, such Party shall, within Ten Days after the Date of the

Any Party dissatisfied with the Issue or Issues, so approved of, may

*Notice of Trial,  
etc.*

apply by Motion  
to the Division  
to have them  
altered.

Interlocutor approving thereof, apply by Motion to the Division of the Court to which the Cause belongs; Notice of which Motion shall be given in Manner after directed Thirty-six Hours before the same is moved in Court: And the said Division shall, after hearing Counsel, or doing otherwise therein as it shall see fit, dispose of the said Motion; and the Issue or Issues as approved of or altered, shall be forthwith engrossed, and signed, and lodged in the Jury Court Office in the Register House, along with the whole Process.

VII. After the Issue or Issues are so engrossed and lodged, all Motions in the Cause shall be made in the Division to which such Cause belongs.

After Issues are  
finally approved  
of and signed, the  
whole Charge of  
Jury Causes in the  
First Division  
shall devolve  
upon the principal  
Clerks of Session,  
and in the Second  
Division upon the  
Record Clerk in  
Jury Causes.

VIII. That when Processes, with the Issue or Issues approved of and signed, are thus lodged in the Jury Office in the Register House, the principal Clerks of Session in the First Division shall write out all the Interlocutors, and take the whole charge of the Jury Causes belonging to that Division. And the Record Clerk in Jury Causes shall write out all the Interlocutors, and take charge of all the Jury Causes belonging to the Second Division. And the Assistant Clerks in Jury Causes shall act under the said principal Clerks of Session and Record Clerk respectively, in regard to all Jury Causes.

### III. PROCEEDINGS AFTER THE ISSUES ARE APPROVED OF, SIGNED, AND ENGROSSED, AND PREVIOUS TO THE TRIAL.

Applications for  
Diligences against  
Havers.

IX. That when any Application is to be made in Jury Causes, for a Diligence to recover documentary Evidence, after the Issues have been finally settled, and engrossed and signed as aforesaid, the Party requiring the same shall lodge at the Office in the Register House, with the Clerks appointed to act in the Business of Trials by Jury, a List describing the Documents required under the said Diligence, with a Notice of Motion for such Diligence, Thirty-six Hours before it is to be moved for; and a Copy of which Notice and List shall be served on the Agent for the opposite Party. And if the Application is made in Vacation, the Motion shall be heard in Manner after directed.

Notice of Trial by  
Pursuer.

*Upd by A.S. 24 Feb 1866  
p 603-4*

X. That as soon as the Issue or Issues in a Cause are finally lodged in the said Office in the Register House as aforesaid, it shall be competent to the Pursuer in the Issue or Issues to give Notice of Trial to the opposite Party, which Notice must be lodged and served in Manner after directed, within Ten Days after the Issue or Issues are lodged in the Office as aforesaid.

XI. That when the Pursuer does not intend to proceed to Trial pursuant to said Notice, he may countermand the same by lodging and serving a Notice of Countermand in Manner after directed. And if after such Countermand, the Notice of Trial is not renewed by the Pursuer within Eight Days after the Date of the Countermand, it shall then be competent to the Defender to give Notice of Trial *by Proviso* to the Pursuer, by lodging and serving a Notice of Trial; and it shall be competent to the Defender also to countermand such Notice of Trial *by Proviso*, in like Manner as is competent to the Pursuer as aforesaid: Provided always, that in case either Party countermands the Notice of Trial given by him, it shall be competent for the Court to fix the Time and Place of Trial, upon Application of the opposite Party; and also that the Party who shall be served with a Countermand, shall be entitled to such Expenses as may have been incurred in consequence of such Notice of Trial, and which may not be available for the Trial of the Cause when it afterwards takes place.

Notice of Trial,  
etc.

Countermand of  
Notice.

*Repealed by Act 24 July 1844  
p. 603-4*

Notice by Pro-  
viso by the De-  
fender.

XII. That to entitle a Party to go to Trial, he must give Fifteen Days Notice previous to the Trial, if the Cause is to be tried in *Edinburgh*; and if the Trial is to be on the Circuit, he must give Notice on or before the second last Day of the Session immediately preceding the Circuit at which the Cause is to be tried.

Period of Notice.

XIII. That when a Party gives Notice that the Cause is to be tried in *Edinburgh*, or on the Circuit, the opposite Party, if he wishes to have the Place of Trial changed, must, within Four Days from the Receipt of such Notice, make a Motion in the Division to which the Cause belongs, for that Purpose.

Change of Place  
of Trial.

XIV. That when either Party shall intend to apply for a Special Jury, Notice of Motion for that Purpose must be given to the opposite Party, within Four Days after giving or receiving Notice of Trial, and which Notice must be lodged and served Thirty-six Hours before the Motion is moved in Court. And if a Special Jury is ordered, the Record and Assistant Clerks in the Office in the Register House, shall transmit the Order of Court to the Sheriffs or Stewarts Depute, their Substitutes or Clerks, in the Districts from which the Special Jury is to come, requiring them forthwith to return the names of Thirty-six Persons qualified to be Special Jurymen.

Special Jury.

XV. That the said Clerks, as soon as they shall have received the Return of the Thirty-six Names, out of which

Striking Special  
Jury.

XI. Moir, 17 Dec. 1842, 5 D. 317.—Craig, 28 June 1843, 5 D. 1261.—Carnegie, 7 Mar. 1844, 6 D. 985.—Morton, 20 Dec. 1844, 7 D. 248.—Burgess, 18 July 1845, 7 D. 1085. See § 10.

XIII. Raiton, 20 Nov. 1844, 7 D. 152.

*Commissions.*

Twenty Special Jurors are to be selected, shall give Forty-eight Hours' Notice to the Parties' Agents to attend them at the Office in the Register House, at a Time to be specified, to reduce the Jury: That after the Jury is thus reduced to Twenty, Precepts shall be issued for summoning the same; and the Name of each Juryman shall be written on Paper, and put into the Balloting Box, rolled up; and the said Jurors shall be called at the Trial in the Order in which they are then drawn from the Box.

*View.*

XVI. That when either Party shall intend to apply for a View, Notice of Motion for that Purpose must be given to the opposite Party, at least Ten Days previous to the Trial, and lodged and served Thirty-six Hours before the Motion is moved in Court.

(Commission to examine Witnesses who cannot be present at the Trial.

XVII. That when it shall be made out upon Oath, to the Satisfaction of the Court, that a Witness resides beyond the Reach of the Process of the Court, and is not likely to come within its Authority before the Day of Trial, or cannot attend on account of Age, or permanent Infirmary, or is labouring under severe Illness, which renders it doubtful whether his Evidence may not be lost, or is a seafaring Man, or is obliged to go into Foreign Parts, or shall be abroad, and not likely to return before the Day of Trial, it shall be competent to examine such Witness by Commission, on Interrogatories to be settled by the Parties, and approved of by One of the principal Clerks of Session, or Record Clerk; and it being established at the Trial, to the Satisfaction of the Court, by Affidavit, or by Oath in open Court, that such Witness is dead, or cannot attend, owing to Absence, Age, or permanent Infirmary, it shall be competent to use at the Trial the Evidence so taken, subject to all legal Objections to its Admissibility. And in all Cases where a Commission is granted, upon the Application of one Party, for examining Witnesses as aforesaid, it shall be competent to the other Party to have a joint Commission, or to propose cross Interrogatories to such Witnesses, to be settled as aforesaid; and in addition to the Interrogatories so settled, it shall be competent to the Commissioner to put such additional Questions to the Witnesses as may appear to him to be necessary, taking care to mark the Question so put, as put by him: That when one Party obtains a Commission to examine Witnesses, and does not use the Evidence obtained under the Commission, the other Party may use the Evidence given under it at the Trial, provided he satisfies the Court, at the Trial, that he could not bring the Witness or Witnesses whose Evidence

he proposes to read, in which Case he shall be liable for the Expense of the Commission. The Depositions taken on Commission shall not be used, if the Witnesses so examined shall afterwards be brought forward at the Trial.

*Productions.*

XVIII. That all Plans, Maps, Models, or other such Productions proposed to be used at the Trial of a Cause, must be lodged Eight Days before the Trial, with the Clerks aforesaid, at the Office in the Register House, if the Trial is to be in *Edinburgh*; and either with the said Clerks, or with the Sheriff Clerk of the County Town where the Trial is to be held, if the Cause is to be tried on the Circuit; and Notice of the lodging thereof shall be at the same Time served on the opposite Agent; and no other Productions shall be allowed to be used at the Trial, unless by Permission of the Court, on its being made out on Oath, to the Satisfaction of the Court, that such Productions could not be lodged in Time.

Lodging of  
Plans, Maps,  
Models, etc.

XIX. That all Writings which are meant to be put in Evidence at the Trial of a Cause, must be lodged Eight Days before the Trial, with the said Clerks at the Register House; and Notice shall be at the same Time given to the Agent for the opposite Party, of the Writings being lodged; and no Writings, but those lodged as aforesaid, shall be admitted except by Consent, as Evidence at the Trial: But nevertheless, it shall be competent to the Court to permit Writings to be given in Evidence at the Trial, on its being established to the Satisfaction of the Court, that they could not be lodged Eight Days before the Trial, nor before the Period at which they are actually produced or exhibited to the opposite Party, and that Notice to the opposite Party had been given of the particular Writing or Writings proposed in such Case to be produced.

Lodging of  
Writings to be  
used at Trial.

XX. That when it is deemed necessary by either of the Parties, that the original of any registered Instrument, or any recorded Process, or any Process depending, or that may have depended in any other Court, should be lodged in Process, it shall be competent for the Party to apply to the Lord Ordinary in the Cause, before the Issues are signed, and thereafter to the Court, or in Vacation as after directed, for a Warrant to authorize and direct the Lord Clerk Register, and his Deputes, or the Keeper of any other Register, in whose Custody the Instrument or Process is preserved, or the Clerk of any Court before which such Process is depending, or may have depended, to deliver up the same to the Clerks aforesaid, at the Office in the Register House, in order to be produced at the Trial, upon

Warrant for original Document.

Motions, etc.

Delivery of the Warrant, and a proper Receipt and Obligation for Redelivery after the Trial; and provided such Application has been intimated to the Agent of the opposite Party, and also to the Lord Clerk Register or his Deputes, Two Days before such Application is made, it shall be competent to the Lord Ordinary, or the Court, if they shall see Cause, to grant such Warrant, in such Terms, and under such Conditions and Qualifications, as may be deemed necessary.

Motions to be heard during Vacation.

XXI. That in all Causes set down for Trial either in *Edinburgh* or on the Circuit, all Motions necessary to the trying such Causes, which are made during the Vacation, shall be heard before the Judge who is to preside at the Trial, if in *Edinburgh*, or by a Judge who is appointed to be upon the Circuit on which the Cause is to be tried, if the Trial is to be on the Circuit; and in case of the Absence of either of them respectively, by the Lord Ordinary on the Bills, it being shown to the Satisfaction of the Judge before whom the Motion is made, that it could not have been made during the Session.

Admissions.

XXII. That when Parties are disposed to make Admissions in regard to Matters of Fact, or to admit the Authenticity of Writings, a Note of the Admissions is to be made in Writing, signed by the Party's Counsel, or Agent, and lodged in Process, and certified by the Clerk; and all Admissions so made may be used and read in Evidence at the Trial, if otherwise competent.

Return of Processes before Trial.

XXIII. That all Processes and Productions borrowed, must be delivered back to the Clerks aforesaid, in the Register House, Two Days before the Trial, if the Cause is to be tried in *Edinburgh*, and Six Days before the Trial, if the Cause is to be tried on the Circuit.

Roll of Causes to be tried.

XXIV. That a regular Roll of Causes for Trial during the Sittings after the Two Sessions, and also for the Sittings in the Christmas Recess, shall be made up, in which shall be enrolled all Causes in which Notice of Trial has been given, or which have been set down for Trial by Consent of Parties, and Leave of the Court; and the Causes so set down for Trial shall be tried in the Order in which they stand on the said Roll, unless it shall be made to appear to the Judge who is to try the Cause, that there is good Reason for altering the Place of the Cause on the Roll, or for postponing the Trial.

Trial may be put off for Absence of material Witnesses, or other sufficient Cause.

XXV. That until the Jury is empannelled and sworn to try a Cause, it shall be competent to apply to put off the Trial on account of the unavoidable Absence, or Sickness of a material Witness, or for other sufficient Cause, to the Satisfaction of the Court, and supported by Oath or Affi-



*Trial*

**davit**, if the Court shall so require; or, in Vacation, by the **Judge** before whom **Motions** are to be heard as before directed; and upon **Payment** of such **Expenses** as shall have been incurred by the opposite Party in consequence of the **Delay** of the **Trial**: But if the **Inability** of a material **Witness** to attend at a **Trial**, or any other Cause for putting it off becomes known to the Party during the Session, the **Motion** to put off the **Trial** must be made in the Session, upon Notice to the opposite Party, and Copies thereof being lodged as aforesaid; and such **Motion** must be supported by **Oath** or **Affidavit**, if the Court shall so require.

**XXVI.** That before a **Trial** is allowed to proceed in **Absence** of a Party the **Judge** presiding at the **Trial** must be satisfied that due Notice of **Trial** has been served upon the Party, or on the known **Agent**, or the **Agent** in the former **Proceedings** of the Cause.

If Party is absent, due Notice of Trial must be proved to Satisfaction of the Court.

## IV. PROCEEDINGS AT THE TRIAL.

**XXVII.** That the existing **Rules** as to the **Pleadings** of **Counsel** shall remain in force, viz. That as soon as the **Jury** shall have been regularly empannelled and sworn, the **Clerk** shall read the **Issues** to the **Jury**; after which, One of the **Counsel** for the **Pursuer** in the **Issues** shall open the **Case**. The **Evidence** for the **Pursuer**, whether **parole** or **documentary**, or both, shall then be produced. When the **Evidence** for the **Pursuer** is closed, One of the **Counsel** for the **Defender** in the **Issues** shall open his **Case**, and shall make his **Observations** on the **Case** of the **Pursuer**. Then the **Evidence** for the **Defender** shall be produced; and when that is closed, One of the **Counsel** for the **Pursuer** shall have a **reply**: But if the **Defender** neither calls any **Witnesses**, nor produces any written **Evidence**, there shall be no **Reply** on the part of the **Pursuer**.

Pleadings of Counsel in opening the Case for the Pursuer and Defender, and in reply.

**XXVIII.** In examining the **Witnesses**, the **Counsel** of the **Parties** shall take the **Examination** of the **Witnesses** in such **Order** as they shall arrange; but the **Counsel** who begins the **Examination** of a **Witness** shall continue that **Examination** throughout, without **Interruption** from any **Quarter** (unless when an **Objection** is taken to the **Legality** of the **Question**) until he exhaust the **Examination**. After this, a **Counsel** on the opposite **Side** may **cross-examine** without **Interruption**, until he exhaust his **Cross-examination**. Then the **Counsel** who first examined in chief may **re-examine**, confining his **Re-examination** strictly to such new **Matter** as may have arisen in **Cross-examination**, unless with **Permission** of the Court.

Rules as to the Examination of Witnesses.

*Trial.*

Rules as to Discussions on Points of Evidence.

Rules as to Cross-examination.

Rules as to settling a special Verdict.

Exceptions to be taken down at the Time they are made, and settled before the Jury leave the Court.

Where a Cause is settled, a Minute shall be made at the Time, and signed by Counsel, and the Authority of the Judge interposed thereto.

XXIX. In all Questions as to the Admissibility of Evidence or other Points occurring in the Course of a Trial the general Rule shall be, that One of the Counsel for the Party for whom the Objection is made shall be first heard; then the opposite Counsel, and then the same Counsel reply; but in Cases of Difficulty and Moment, the Court may permit more Counsel than One to be heard.

XXX. That it shall be competent in all Cases when Witnesses are subjected to Cross-examination, for the Counsel to examine such Witnesses as to all pertinent Facts and Circumstances; and it shall not be an Objection, that the Questions put on such Examination, are not cross to those put on the original Examination.

XXXI. When a special Verdict is to be found, such finding may, by Consent of Parties, be settled out of Court by the Notes of the Judge who tried the Issue, or otherwise; but if the Parties do not consent to that Mode of settling the special Verdict, the different Parts of the Evidence shall be stated to the Jury, in order that they may find the Facts which are to constitute the special Verdict.

XXXII. That where the Counsel for either Party shall except to Points of Law laid down by the presiding Judge in the course of a Trial, or in his Charge to the Jury, the Counsel tendering such Exception shall deliver in a Note thereof to the Judge at the Time the Exception is taken, and the same, if it shall state correctly what was decided or directed, or omitted by the Judge to be directed, shall be certified by the Judge at the Time, by subscribing his Name to such Note; and a Note of all such Exceptions taken in the course of the Trial, or to the Charge of the Judge, shall be finally settled and certified, as aforesaid, before the Jury is enclosed to consider their Verdict.

XXXIII. That in Cases in which the Parties, instead of taking the Verdict of a Jury, agree to settle the Cause either by Compromise, judicial Reference, or in any other Way, a Minute shall be given in, signed by the Parties, or by their Counsel, to which the Judge shall interpose his Authority, by subscribing the same.

## V. PROCEEDINGS AFTER TRIAL.

Rules as to applying Verdict, and entering up Judgment.

XXXIV. That after a Verdict has been returned by the Jury, it shall be engrossed on the Issue, and signed by the Clerk who attended at the Trial; and the Verdict shall be applied by the Court in Time of Session, and Judgment entered up, upon a Motion to be made by the Party for whom the Verdict has been found; such Motion, in Causes which have been tried at the Sittings after the End of the

Session, or during the Christmas Recess, or upon the Circuits, may be made at any Time after the Expiration of six Days after the Commencement of the next Session after the Trial; and in Causes which have been tried during the Session, or immediately before the Sitting-down of the Session, such Motion may be made at any Time after the Expiration of Ten Days after the Trial.

XXXV. That upon the Verdict being so applied, the Court will either grant or refuse Expenses; and, if granted, an Account shall be ordered to be lodged, and remitted to the Auditor to be taxed, as in other Causes before the Court of Session.

XXXVI. When the Party against whom the Verdict has been found intends, without lodging a Bill of Exceptions, to apply for a new Trial in Causes which have been tried at the Sittings after the End of the Session, or during the Christmas Recess, or at the Circuits, such Party shall give Notice of a Motion for a Rule to show Cause why the Verdict should not be set aside, and a new Trial granted, within Six Days after the Commencement of the next Session, or of the Meeting of the Court after the Christmas Recess, or Ten Days after the Trial of the Cause, if the Cause has been tried during the Session, or immediately before the Sitting-down of the Session. But it shall not be competent for the Party moving for a new Trial, to obtain from the Judge who presided at the Trial, his Notes of the Evidence, until the Division, on a Motion being made for that Purpose, direct a Copy of the Notes to be furnished.

XXXVII. That the said Judge, on transmitting a Copy of his Notes of the Evidence, may accompany the same with any Statement or Explanation which he may think necessary for the Information of the Court. Provided always, that it shall be competent to the Division of the Court of Session in which the Motion for the new Trial is made, to require the Attendance of the said Judge on such Motion being heard.

XXXVIII. That it shall not be competent to proceed in any Bill of Exceptions, unless such Bill shall be lodged within Six Days after the Commencement of the next Session, or of the Meeting of the Court after the Christmas Recess, if the Cause has been tried after the End of the Session, at the Sittings in *March* or *July*, or during the Christmas Recess, or upon Circuit; or within Ten Days, if the Case has been tried during the Session, or immediately before the Sitting-down of the Session, or if the Exception has been taken on a Motion for a new Trial, except Leave has been obtained from the Court to prolong the Period for presenting the Bill: And if the Party shall have

*New Trial and  
Exceptions.*

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As to granting  
or refusing Ex-  
penses.

As to applying for  
a new Trial.

Intimation to be  
given to the pre-  
siding Judge. He  
may be required  
by the Division to  
attend.

Proceedings in  
Bills of Excep-  
tion.

*Exceptions.  
Notice.*

both lodged a Bill of Exceptions, and given Notice of a Motion for a new Trial in the same Cause, the Court shall have both before them at the Discussion on the Bill of Exceptions, so that both may be disposed of at the same Time, if that shall be deemed expedient or necessary.

Motions for new Trials, and on Bills of Exception to be summary.

XXXIX. That as it is desirable that all Motions for new Trials, whether on Bills of Exception or otherwise, should be disposed of without Delay, such Motions shall be considered as summary, and the Discussion of them shall be proceeded with accordingly.

Proceedings under a special Verdict.

XL. When a special Verdict has been found by the Jury in a Cause, as aforesaid, the same shall be adjusted at the Sight of the Judge who presided, and signed by the Clerk who officiated at the Trial; and when so adjusted and signed, the Cause shall be moved before the Court, and a Day fixed for hearing Counsel thereon.

## VI. MISCELLANEOUS REGULATIONS.

All Regulations as to Notices, etc., shall be the same in new Trial as in original Trial.

XLI. That all the Regulations as to Notices of Trial, as to Abandonment of the Suit, as to not proceeding to Trial, and as to not appearing and proceeding with Evidence at the Trial, and all other Matters and Things herein provided for regulating the Conduct of Parties as to Trials, shall be the same in the Case of a new Trial, as in the Case of an original Trial.

By Consent of Parties, the Periods may be shortened.

XLII. That none of the preceding Regulations as to Time, shall apply to the Case in which the Parties may consent to shorter Periods; in which Case their Consent shall be the Rule.

The principal Clerks of Session and Jury Clerks to sign the necessary Rules in Jury Causes.

XLIII. That the principal Clerks of Session and Clerks in Jury Causes shall sign the Rules and Precepts for summoning Juries; also all Commissions and Diligences granted for examining and citing Havers and Witnesses, either to attend Trials or otherwise; and that the Signature of any of the said Clerks shall be a sufficient Warrant to the Keeper and Depute Keeper of the Signet, for signeting the same.

General Rules as to Notices of Motions.

XLIV. That in all Cases where Notices of Motions, or Notices of Trial, or Countermand of such Notices, are directed to be given under this Act of Sederunt, the principal Notice, signed by the Agent, shall be lodged in the Jury Office in the Register House, and a Copy served at the same Time upon the Agent for the opposite Party; and where the Motion is to be made before the Division, a Copy of the Notice must also be lodged with the Keeper of the Inner House Rolls; and in all Cases in which any Number of Days' Notice is required to be given for Business to be done, the Days are to be computed by excluding the Day

on which the Notice is given, and including the Day on which the Business is to be done.

**XLV.** That when a Party who is found liable in Expenses, shall state an Objection to the Expenses of bringing Witnesses to the Place of Trial who shall not have been examined, on the Ground that they should not have been brought, the Auditor, if required, shall separately report on such Objection, taking every Aid in forming his Report, from Inspection of the Notes taken by the Agents, of the Evidence expected from such Witnesses. And where a Party who has been found liable in Costs can show that he has been obliged to incur Expense by his Adversary lodging a Number of Papers beyond what were fairly necessary for the Trial, it shall be competent for that Party not only to object to pay for these Papers, but to move for and obtain the extra Expense to which he can show he was thus put, or to be allowed to set it off against the Sum for which he is liable; and in the event of any such Objection or Claim, the Auditor shall, if required, report separately on this Point, and the Clerk officiating at each Trial shall take a Note of the Papers that are made Evidence, which shall be furnished to the Auditor if required.

**XLVI.** That if it shall be made to appear to the Court, that a Party has abandoned his Suit, or if the Pursuer, or the Party appointed to stand as Pursuer, shall not proceed to Trial within Twelve Months after Issues have been finally engrossed and signed, the Court shall proceed therein as in Cases in which Parties are held as confessed, unless sufficient Cause be shown for the Delay to the Satisfaction of the Court. And in case either Party shall not appear at the Trial of a Cause after due Notice of Trial has been given by the opposite Party, the Party appearing, if Pursuer in the Issue, shall be entitled to lead his Evidence, and go to the Jury for a Verdict; and if the Party appearing be the Defender in the Issue he shall be entitled to obtain a Verdict in his Favour without leading Evidence; but if the Party appearing shall decline to proceed in this Manner, then the Judge presiding at the Trial shall certify to the Division the Fact of the other Party not appearing, and the Division shall thereupon proceed as in Cases in which Parties are held as confessed, unless it shall be shown to the Satisfaction of the Court that the Failure of the Party to appear at the Trial was occasioned by some sufficient Cause.

**XLVII.** That no Cause shall fall asleep after the Issue or Issues shall have been finally adjusted, and engrossed and

*Expenses.  
Abandonment.*

Expenses of  
Witnesses not  
examined.

In case of a Party  
abandoning his  
Suit, or not proceeding  
to Trial within Twelve  
Months, he shall  
be held as confessed.

Regulation in case  
of either Party  
not appearing at  
the Trial.

A Jury Cause  
shall not fall  
asleep after Issues  
are signed,  
though not moved  
in for Year and  
Day.

XLIV. Leadhills Mining Co., 18 Feb. 1856, 18 D. 594.—Carron Co., 7 Feb. 1857, 19 D. 884.

XLVI. Johnstone, 19 July 1844, 6 D. 1418.—Maclaren, 22 Dec. 1859, 22 D. 278.—Butters, 18 Mar. 1860, 22 D. 986.

*Jury Causes.*

In case of Doubts or Difficulty as to applying these Regulations, the Lord Ordinary to report and receive the Direction of the Division thereon.

Retransmission of Processes to the Court of Session Clerks from the Jury Office.

signed as aforesaid, though no Step shall have been taken therein within Year and Day.

XLVIII. If any Lord Ordinary shall, in applying the aforesaid Regulations, find any Doubt or Difficulty, he may report the same verbally, or in such other Manner as he shall think best, to the Division to which the Cause belongs, for the Opinion of the Division thereon; and on receiving the Opinion of the Division on the Matter, he shall act in the particular Case in which the Question arises, according to that Opinion.

XLIX. That all Processes which are at present in dependence before any of the Lords Ordinary, and are now in the Office for Jury Causes, shall, immediately after the passing of this Act, be retransmitted by the Clerks in the said Office to the respective Offices of the Clerks who are attached to the Lords Ordinary by whom such Causes were transmitted to the Jury Roll.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common Form.

C. HOPE, *I.P.D.*

*Act of Sederunt for making further Regulations regarding Proceedings in Jury Causes.*—[Edinburgh, 10th July 1844.]

THE Lords of Council and Session taking into Consideration the Act of Sederunt of 19th December 1835, whereby a Table of Fees for the Practitioners in the Court of Session was authorized and sanctioned to be acted on, as an interim Table and Rate of Charge for Three Years, from 12th January 1836, and that by Section 4th of the said Table, certain Rules and Regulations were established regarding Proceedings in Jury Causes; and, further, considering that it is expedient to make further Rules and Regulations respecting Jury Causes, therefore ordain as follows:—

Scale of Charges for taking Instructions and drawing Precognitions.

I. That no Charge shall in future be allowed for Journeys and Attendances for taking Precognitions of Witnesses, but, in lieu thereof, a Charge shall be allowed for taking Instructions for Precognitions of 13s. 4d., L.1, 1s., L.2, 2s., or L.3, 3s., according to the Circumstances of the Case; and also Charges for drawing the Precognitions according to Length at the same Rate as is chargeable for drawing Memorials and other Papers, and that the said Charges may be stated either in the Form of a Memorial to Counsel for conducting the Trial, or separately, as may be con-

considered proper: Provided always, that the Charges for drawing the Precognitions shall be subject to the Control of the Court, and that in case they shall contain irrelevant or unnecessary Matter, they shall not be allowed by the Auditor on the Taxation of the Account: And also, Provided that in Cases where it can be shown to the Satisfaction of the Auditor that it was indispensably necessary, or highly expedient, that either the *Edinburgh* or Country Agent should go to a Distance from their Places of Residence for the purpose of precognosing a Witness or Witnesses, reasonable Charges shall be allowed for such Journeys, and the Expenses thereof; but in such Cases no Charge shall be allowed for drawing the Precognitions of such Witness or Witnesses.

*Expenses.*

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Travelling Expenses, etc., and Time, when to be allowed

II. That the Charges for Copies of the Memorial for the Trial and Precognitions, as well as for Copies of any Papers or Documents which may be necessary for the Instruction of Counsel to conduct the Trial, shall be stated in the Account immediately before the Fees to Counsel for the Consultation or Trial, and that no Charge for Copies of Papers or Documents shall be allowed but such as are essentially necessary for the Instruction of Counsel; that is to say, if it is only a particular Clause or Clauses of a Deed or particular Letters or Papers on which the Party relies, a Charge shall only be allowed for Copies of such Clauses or Letters, and not for Copies of the whole Deed or whole Papers, if unnecessary at the Trial: And it is hereby provided, That in such Cases as there may be many Papers or Documents which are necessary for the Instruction of Counsel on both Sides, or which it may be necessary or proper should be laid before the Judges and Jury, it may be competent for the Parties to print the same at their mutual Expense so as to avoid the Expense of Copies.

Charges for Memorials, etc., regulated.

III. That the Charges for Witnesses attending a Trial shall not be stated either in the Town or Country Agent's Accounts, but in a separate Schedule to be appended to the Account, and which Schedule shall be in the Form hereto annexed.

Separate Account to be made out for Payment to Witnesses

IV. That the Allowances to be made to Witnesses attending a Trial shall be as follows:—

Scale of Payment.

(1.) When the Witnesses reside in the Town where the Trial takes place.

Labourers, Mechanics, Servants, Journeymen, etc., per Day, from 5s. to 7s. 6d., according to Circumstances.

Tradesmen, Shopkeepers, Innkeepers, Clerks, Farmers, etc., per Day, from 10s. to 15s., according to Circumstances.

Superior Tradesmen, Manufacturers, Shopkeepers, Auctioneers, etc., per Day, from 10s. 6d. to L.1, 1s.

Expenses.

Gentlemen, Merchants, Bankers, Clergymen, etc., per Day, L.1, 1s.

Professional Persons, such as Writers or Solicitors, Accountants, Physicians, Surgeons, eminent Architects, Engineers, Surveyors, etc., per Day, L.2, 2s.

Females, according to their Station in Life, per Day, from 5s. to L.1.

The above Allowances being in full of all the above respective Classes of Persons shall be entitled to demand for their Trouble and Maintenance, and no separate Charges shall be allowed for Tavern Expenses, or otherwise, in respect of Witnesses.

(2.) Where the Witnesses do not reside in the Town where the Trial takes place.

They shall be allowed at the above Rates for the Time necessarily occupied by them in going to, remaining at, and returning from, the Place of Trial, besides reasonable travelling Charges for going to and returning from the Place of Trial, according to their Rank and Station of Life, and with reference to the Means of Conveyance to and from their respective Places of Residence, such as Steam-boats, Railways, etc. : Provided always, that the said Allowances for Travelling shall not exceed in whole the Rate of Sixpence per Mile for going to, and the same for returning from, the Place of Trial : And also, Provided that in Cases where it is found necessary to employ professional or scientific Persons, such as Physicians, Surgeons, Chemists, Engineers, Land Surveyors, or Accountants, to make certain Investigations previous to a Trial, in order to qualify them to give Evidence thereat ; such additional Charges for the Trouble and Expenses of such Persons shall be allowed as may be considered fair and reasonable : Provided that the Judge who tries the Cause, shall, on a Motion made to him, either at the Trial or within Eight Days thereafter, if in Session, or if in Vacation, within the first Eight Days of the ensuing Session, certify that it was a fit Case for such additional Allowance.

Allowance to professional and scientific Persons for preliminary Investigations.

Provided Judge shall certify.

Vouchers to be produced.

Reasons for citing Witnesses not examined to be set forth.

V. That Receipts or Vouchers for all the Sums stated as paid to Witnesses shall be produced to the Auditor at the Taxation of the Account, otherwise the same shall not be allowed.

VI. That the Names of the Witnesses who were examined at the Trial shall be stated separately, as in the annexed Schedule, from those that were not examined ; and if the Expenses of all or any of the latter Class of Witnesses shall be demanded, the Grounds or Reasons for such Demand shall be stated ; as, for example, that he was cited to prove a certain Fact or Writing which the opposite Party had re-



used to admit before Trial, but which his Counsel admitted at the Trial, whereby the Examination of the Witnesses was rendered unnecessary; or (in the Case of a Defender) because the Pursuer had failed to prove his Case, in consequence of which the Defender's Witnesses were not examined; but, in this latter Case, it ought to be shown that all the Witnesses charged for were properly and necessarily cited; the general Rule laid down by the Court being, that the Expense of Witnesses who are not examined shall not be allowed, unless a good and valid Reason shall be assigned for their non-Examination.

*Notice of Trial*

VII. That the Charges for Messengers for executing Summonses or Citations of Witnesses or Havers, and returning an Execution, shall be at the Rate of 1s. 6d. per Mile for Travelling, and 1s. 6d. for each Copy or Citation, including all Expenses of Travelling, etc., or 2s. 6d. for each Citation, if the Defender, Haver, or Witness resides in the same Town as the Messenger. And the Lords appoint this Act to be entered in the Books of Sederunt, and printed and published in the usual Manner.

Messengers' Charges regulated.

D. BOYLE, *I.P.D.*

*SCHEDULE REFERRED TO IN THE FOREGOING REGULATIONS:—*

| Witnesses' Names and Designations. | Distance from Place of Trial. | Number of Days absent, and Rate per Day. | Total Sums paid. | Taxed off by the Auditor. |
|------------------------------------|-------------------------------|------------------------------------------|------------------|---------------------------|
| I. Witnesses examined.             |                               |                                          |                  |                           |
| II. Witnesses not examined.        |                               |                                          |                  |                           |

*Act of Sederunt respecting Jury Causes.*—[*Edinburgh, 24th February 1846.*]

THE Lords of Council and Session, considering that there is Doubt as to the Meaning or Construction of the Enactments contained in the 10th and 11th Sections of the Act of Sederunt of 16th *February* 1841, regulating Proceedings in Jury Causes, do hereby repeal the said 10th and 11th

Notice of Trial.

Pursuer countermanding Notice of Trial, and not renewing, Defender may give such Notice, etc.

Court may fix Trial notwithstanding Countermand.

1 & 2 V., c. 118,  
§ 7.

Transmission of  
Jury Causes.

Sections of the said Act of Sederunt, and do enact and declare, that, from and after the Date hereof, the following Regulations shall be used and observed in place thereof, viz. :—

That as soon as the Issue or Issues in the Cause are finally engrossed and lodged in the Office in the Register House, it shall be competent to the Pursuer in the Issue or Issues to give Notice of Trial; and if the Pursuer does not give Notice of Trial within Ten Days from the Time the said Issue or Issues are so lodged as aforesaid, or, after giving Notice of Trial, countermands the same, and does not renew the Notice of Trial within Ten Days after such Countermand, it shall thereafter be competent to the Defender to give Notice of Trial to the Pursuer, and also to countermand such Notice of Trial in like Manner as is competent to the Pursuer. But if the Defender countermands, then the Pursuer's Right to take the Lead shall revive for other Ten Days from the Date of such Countermand: Provided always, that in case either Party countermands the Notice of Trial given by him, it shall be competent for the Court, if then sitting, or to the Judge at the Sittings, or on the Circuit for which such Notice of Trial had been given, to fix the Time and Place of Trial, on Cause shown by the opposite Party. And the Party who shall be served with a Countermand shall be entitled to such Expenses as may have been incurred in consequence of such Notice of Trial, and which may not be available for the Trial of the Cause when it afterwards takes place.

And whereas, by the 7th Section of the Act 1st and 2d Victoria, cap. 118, it is, inter alia, enacted, "That the said Causes so appropriated to Trial by Jury, or ordered to be so tried, shall not be sent to the Jury Clerk's Offices until the Record is ready to be closed, and Issues are to be prepared: Provided always, that the Practice of remitting such Causes to the Jury Roll shall remain as at present; but being so remitted, such Causes shall not be retransmitted to the Court of Session Roll, but shall be dealt with in the Jury Court Roll in all Respects, and subject to the like Review, as if they had been in the Court of Session Roll:"—it is hereby declared that this Regulation does not apply to Causes in which the Matter sent for Trial has been withdrawn, settled, or abandoned, or where Parties have agreed as to the Facts, or to renounce Probation by Witnesses, or to Causes after Trial, where other Matter is left to be disposed of by the Division or Lord Ordinary remitting the Cause. It is therefore enacted and declared, that in all such Cases the Process shall be retransmitted by the Clerks in Jury Causes to the Division or Lord Ordinary who trans-

mitted the same, to be proceeded in in the Court of Session Roll as in other Court of Session Causes.

*Entail  
Amendment.*

And the Lords appoint this Act to be engrossed in the Sederunt Book, and printed and published in the usual Manner.

D. BOYLE, *J.P.D.*

*Act of Sederunt regulating the Forms of Consents under the Act 11th and 12th Victoria, cap. 36.—[Edinburgh, 18th November 1848.]*

THE Lords of Council and Session, in virtue of the Powers, and in pursuance of the Directions contained in the Act of the 11th and 12th of *Victoria*, cap. 36, intituled, "An Act for the Amendment of the Law of Entail in *Scotland*,"—Do enact and declare,—

That all Consents required by the said Act to Instruments of Disentail, Deeds of Conveyance or Security, Leases, Feus, or Excambions of any entailed Estate, or Part thereof, or the Disposal of any Money, or of other Property, real or personal, invested in Trust for the purpose of purchasing Land to be entailed, or of Land directed to be entailed, or any other Act or Deed to which the Statute requires Consent, shall be in the Form, or as nearly as may be in the Form, of the Schedule hereto annexed.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and printed and published in the usual Form.

D. BOYLE, *J.P.D.*

#### SCHEDULE.

I, A. B. (state the Designation and Place of Abode of the Party, and whether he is in Minority or of full Age, or that he is of the Age of 25, if that be requisite), the Heir next in succession, being Heir apparent of F. G. (Name and Designation), the Heir (or Institute, as the Case may be) in possession (or in whatever Character the Consent is granted, here set it forth; and if granted by more than one Heir, state their Names and other Particulars as above; and if it is granted by or with the Consent of the Guardians, One or more, of a Pupil or Minor or incapable Person, state the Name, Designation, Place of Abode, and Character or Office of every such Guardian, and the Name and other Particulars, as above, of the Pupil or incapable Person), under a Deed of Entail, dated (here set forth the Date of the Entail, and, if recorded in the Register of Tailzies, the Date of Registration), executed by the now deceased C. D. of E. in favour of (here insert the Destination) of All and whole (here insert the leading Name of the Estate, or a general Description of the same, and state the County or Counties in which the same is situate) do hereby consent to the Disentail\* by the said F. G., of the whole Lands, Estate, and others contained in the said Deed of Entail (or if the Consent applies to a Part only, say "of the following Parts of the said Lands and others contained in the said Deed of Entail," and then proceed to describe them particularly), and that in the Form and Manner authorized by an Act of the 11th and 12th of *Victoria*, cap. 36, intituled "An Act for the Amendment of the Law of Entail in *Scotland*." (If the Consent is given under the 4th Section of the Statute, and subject to Conditions, Limitations, or Restrictions, which the Party con-

\* NOTE.—If the Deed of Consent applies to a Deed of Conveyance or Security, an Excambion, a Lease, or a Feu, or the Disposal of Trust Money, or other Property directed to be entailed, or any other Act or Deed to which the Statute requires Consent, the necessary Alteration will be here made, stating, shortly, the Nature of the proposed Transaction.

sending wishes to insert in the Deed of Consent, insert such Conditions, Limitations, or Restrictions here.) And I consent to the Registration hereof for Preservation. In witness whereof (add a Testing Clause in legal Form).

[Signature of Party or Parties.]

F. G., Witness.

H. I., Witness.

*Entail  
Amendment.*

*Act of Sederunt in regard to the Service of Petitions under the Entail Act.—[Edinburgh, 23d December 1848.]*

THE Lords of Council and Session, in virtue of the Powers contained in the Act 11th and 12th of *Victoria*, cap. 36, intituled, "An Act for the Amendment of the Law of Entail in *Scotland*,"—Do enact and declare,—

That, unless otherwise provided for by the Interlocutors or Orders of the Court, in the particular Case, the Petitions presented under the said Act shall be intimated to, or served on, the Parties called in such Petitions, or called or appointed to be called in the course of the Procedure thereon, in Manner following:—

Service on Party  
within Scotland.

I. Where the Party called is within *Scotland*, he shall be allowed Fourteen Days from the Date of Service, or Forty Days if within *Shetland* or *Orkney*, for answering the Petition.

Edictal Service  
and Intimation.

II. Where the Party called is furth of *Scotland*, he shall be allowed Sixty Days from the Date of Service for answering the Petition, and Service shall be made in the Way and Manner prescribed for Services in lieu of the previously subsisting Form of Edictal Service, by the Act 6th *George IV.*, cap. 120, and relative Act of Sederunt in the Matter: And Intimation shall also be made by the Petitioner's Agent to such Party's known Agent in *Scotland*, if he has any known Agent there, and a Certificate shall be produced in Process, signed by the Petitioner's Agent, stating either that such Intimation has been made, or that the Party has no known Agent in *Scotland*.

If Party served  
in Minority, etc.,  
Service to be  
made on Guar-  
dian.

III. Where the Party called is in Minority, or subject to any legal Incapacity, and has a Father, or known Tutors or Curators, or other legal Guardians, One or more, other than the Petitioner, such Petition shall, besides being served in the usual Form, be also served on such Father, or on One, at least, of such Tutors, Curators, or other legal Guardians, in the same Manner as if he were a Party called.

Tutor or Curator  
ad litem to be  
appointed.

IV. When the Party called is in Minority, and the Petitioner is the Father, or sole Tutor, Curator, or legal Guardian, of such Party, it shall not be necessary to serve the Petition on the Petitioner as the Party's legal Guardian, or

to use the Form of Service on the Tutors and Curators of such Party at any Market Cross ; but in the course of the Application, a separate Tutor ad litem, or Curator ad litem, or Curator bonis, or other Guardian, shall be appointed to such Party.

*Entail  
Amendment.*

V. It shall be competent for any Party of full Age, when granting his Consent, in Terms of the said Statute, and relative Act of Sederunt, to insert in such Consent a Declaration, that he dispenses with Intimation to himself of the Petition with or under which such Consent shall be produced ; and when he is called as a Party in such Petition, such Consent shall be equivalent to Intimation thereof to him, and no further Intimation thereof to him shall be necessary. And it shall also be competent, in such Consent, to dispense with the induciæ, or Time allowed, or to be allowed, for answering the Petition.

Heir giving Consent to Action may also accept Service.

But there is hereby reserved to the Court full Power to order Intimation and Service otherwise or additionally, or to dispense with Service in whole or in part, and that in each Case according to the Circumstances of such Case.

Court may order further Intimation.

And the Lords appoint this Act to be engrossed in the Books of Sederunt, and to be printed and published in the usual Form.

D. BOYLE, *J.P.D.*

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*Act of Sederunt for modifying a previous Act of Sederunt, in regard to the Service of Petitions under the Entail Act.*  
—[Edinburgh, 22d May 1849.]

THE Lords of Council and Session, in virtue of the Powers contained in the Act 11th and 12th of *Victoria*, cap. 36, intituled, "An Act for the Amendment of the Law of Entail in *Scotland*," do enact and declare, That, from and after the Date hereof, the following Provision contained in the Act of Sederunt, passed on the 23d Day of *December* 1848, in regard to the Service of Petitions under the aforesaid Statute, shall be no longer operative or have Effect, viz. :—

"V. It shall be competent for any Party of full Age, when granting his Consent in Terms of the said Statute and relative Act of Sederunt, to insert in such Consent a Declaration, that he dispenses with Intimation to himself of the Petition with or under which such Consent shall be produced ; and when he is called as a Party in such Petition, such Consent shall be equivalent to Intimation thereof to him, and no further Intimation thereof to him

Repeal of § 5 of  
A. of S. 23 Dec.  
1848.

Pupils'  
Protection.

## Exception.

shall be necessary: And it shall also be competent, in such Consent, to dispense with the *inducia*, or Time allowed, or to be allowed, for answering the Petition."

But the aforesaid Provision shall have full Effect in regard to all Consents granted in pursuance thereof, which have been signed before the Date of this Act of Sederunt.

And the Lords appoint this Act to be entered in the Books of Sederunt, and published in the usual Manner.

D. BOYLE, *I.P.D.*

*Act of Sederunt in pursuance of the Statute for the better Protection of the Property of Pupils and others.*—[*Edinburgh*, 11th December 1849.]

THE Lords of Council and Session, in pursuance of the Powers vested in them by the Act of Parliament passed in the 12th and 13th Year of her present Majesty's Reign, Chapter 51, intituled, "An Act for the better Protection of the Property of Pupils, absent Persons, and Persons under mental Incapacity in *Scotland*," do hereby enact and declare as follows:—

Petitions to be  
boxed to the  
Accountant of  
Court.

I. That every Petition to be presented to either Division of the Court of Session for the Appointment of any Factor loco tutoris, Factor loco absentis, or Curator bonis, shall, when boxed to the Judges and Clerk of Process, be also boxed to the Accountant of the Court of Session, and unless marked by the Boxing Clerk as duly boxed shall not be received by the Clerk.

Time for finding  
Caution.

II. That when not otherwise expressed in the Interlocutor appointing a Factor or Curator on such Petition, the Time for finding Caution shall be One Calendar Month from the Date of such Appointment; the Court hereby reserving Power, on Cause shown, by Application made at any Time before Expiry of that Month, to prorogate the Time for finding Caution.

Lord Ordinary on  
Application for  
special Powers  
shall order such  
Intimations.

III. That all Applications for special Powers by Factors, or Curators bonis foresaid, or by Tutors or Curators coming within the Provisions of the Act, shall be made to the junior Lord Ordinary in the Manner and Form prescribed or permitted by the 7th and 8th Sections of the Statute; and the Lord Ordinary shall, before reporting such Applications to the Court, order such Intimations to be made as he may deem proper, and may report the same either with or without ordering the Papers to be printed and boxed to the Court, as the Circumstances may require.

IV. The principal Clerks of Session are authorized and

Directed to transmit to the Accountant at all Times on his Requisition, the Proceedings, or such Part thereof as he may require, in all Processes of judicial Factory or other Processes embraced by the said Act, whether depending now or to depend hereafter, in so far as such Proceedings may not be required for the Use of the Court; and the senior principal Clerk of Session is hereby authorized to transmit to the Accountant the principal Return made by the Clerks of Session to the Court regarding judicial Factories, dated on the 31st Day of January 1849.

*Loosing  
Arrestments.*

Transmission of  
Processes.

V. That the Bond of Caution to be lodged for any Factor loco tutoris, or Factor loco absentis, or Curator bonis, shall be forthwith transmitted by the Clerk of Process to the Accountant, and the Factory shall be entered in his Books.

Bond of Caution,  
Custody of.

VI. That upon the issuing of any Gift of Tutorry-dative, the Queen's and Lord Treasurer's Remembrancer shall forthwith transmit a Copy of the Bond of Caution to the Accountant, who shall enter the Appointment in his Books.

As to Gift of  
Tutorry.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in the usual Manner.

D. BOYLE, *I.P.D.*

*Act of Sederunt regarding Loosing of Arrestments.—*  
[Edinburgh, 8th June 1850.]

THE Lords of Council and Session, considering that an Act of Sederunt was passed on the 11th Day of July 1826, to regulate the Practice in Bills of Loosing Arrestment, and that certain Regulations have been made from Time to Time by Acts of Sederunt, regarding the Forms of Procedure in the Bill Chamber; and it does not clearly appear how far such Regulations were intended to apply to Bills of Loosing Arrestments, do therefore hereby enact and declare, that from and after the passing of this Act, the following Regulations shall be observed in the Bill Chamber:—

I. All Bills or Petitions for Loosing Arrestments presented in the Bill Chamber, shall be entered by the Office Clerk in the Monthly Roll in which Suspensions and Advocations are at present entered; and he shall give out Certificates and Extracts of Bonds of Caution, in such Cases, in the same Manner as in Cases of Suspension.

As to Enrolment  
of such Petitions.

II. In Bills of Loosing Arrestments, presented under the 4th Section of the above-mentioned Act of Sederunt,

Mode in which  
Interlocutors may

*Prints for  
Jury Trials.*

be brought under  
Review.

and in all Bills or Petitions for Loosing Arrestment, which do not pass de plano, but in which Answers are ordered, or Discussion takes place between the Parties, the Interlocutor passing or refusing such Bills or Petitions shall be entered by the Office Clerk in the Minute Book, and the Certificate of Refusal shall not be issued, or the passed Bill delivered, till the Expiry of Forty-eight Hours after the Entry in the Minute Book; and it shall be competent to the Lord Ordinary, on Cause shown by a Note for the Party, to prohibit the Issue of the Certificate or Delivery of the passed Bill during such Time as he may judge reasonable, for enabling the Party to obtain a Review of the Interlocutor; but the lodging of such Reclaiming Note shall not prevent the Interlocutor being carried into Effect, unless such Prohibition shall have been made by the Lord Ordinary.

Expenses.

III. All Decrees for Expenses in Loosing Arrestments shall be entered in the Minute Book, and extracted by the Office Clerk, in the same Manner as in Cases of Suspension.

D. BOYLE, I.P.D.

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*Act of Sederunt regarding the Expenses to be allowed of Documents printed for Jury Trials.*—[Edinburgh, 18th July 1850.]

Expense of Documents actually printed and produced may be allowed.

THE Lords having had their Attention directed to the Provisions in the 2d Section of the Act of Sederunt of 10th July 1844, respecting the Prints of Documents for the Use of the Judge at the Trial of Causes, by a Report from the Auditor in the Case of Forbes v. Dunbar, and considering that from the Number of Documents which in many Cases it is necessary to produce at the Trial, it is expedient for the Ends of Justice that the Judge should have the Opportunity of considering the same in Print when the Parties furnish them in that Form, declare that in future they will allow, under the Conditions after mentioned, to the successful Party the Expense of printing the Documents actually produced and used at the Trial;—but, in order to check undue Expense, direct the Clerk at the Trial to mark on the Margin of the Print, for the Use of the Auditor, the Documents actually produced, and the Auditor to examine such Print, with a View to see whether Deeds have been unnecessarily printed at length, or Accounts and other Papers unnecessarily printed, when nothing turned on the Terms of the same: And, further, the Lords direct the



Party who means to Claim such Expense to apply for, and obtain from the Judge trying the Cause a Certificate as to the Extent to which such Print was necessary, and direct the Auditor to tax the Account according to such Certificate, so far as he finds that it rules the Matter: And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt, and to be printed and published in the usual Form.

*Division of  
Commonty.*

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D. BOYLE, *I.P.D.*

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*Act of Sederunt in pursuance of the Statute to facilitate Procedure in the Court of Session.*—[Edinburgh, 31st October 1850.]

THE Lords of Council and Session, taking into Consideration the Terms of the 1st Section of the Statute of the 13th and 14th of her Majesty, Chapter 36, do hereby enact and declare, that from and after the 1st of November, all Summonses shall be framed in the Manner and according to the Directions contained in the said 1st Section of the above-mentioned Statute, and in the Form given in Schedule A thereunto annexed: And it is further enacted and declared, that the Conclusions of the Summons in each Case, so far as the same are Matter of Form and Style, shall, in the meantime, be in the Form and Style hitherto appropriate for the Class of Actions to which the Summons may belong.

*Form of Sum-  
monses.*

J. H. MACKENZIE, *I.P.D.*

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*Act of Sederunt to regulate Process of Division of Commonty.*  
—[Edinburgh, 18th June 1852.]

THE Lords having taken into Consideration the Manner in which the Process of Division of Commonty is now conducted, do hereby enact and declare that, from and after the Date hereof,

I. The Summons in the Process of Division of Commonty shall be prepared in Terms of the 1st Section of the Statute 13th and 14th Victoria, Cap. 36.

*Form of Sum-  
mons.*

II. The Condescence framed in Terms of such Section shall set forth, in reference to a Plan or Sketch to be produced along with the Summons, the Description of the Boundaries of the Common which the Pursuer proposes to have divided, according to natural or other Objects, or the

*Condescence  
and relative Plan.*

*Reclaiming Days.*

Averments  
necessary in  
Condescendence.

Form of De-  
fences.

Lord Ordinary to  
determine as to  
Form of Proce-  
dure.

Names, if any, of Hills, Mosses, and other Localities, occurring along or near to the Line of such Boundaries.

III. The Pursuer shall, in said Condescendence, state the Nature and Extent of the Right and Interest he claims in such Common, the Titles under which he maintains that such Interest belongs to him, and the Claim he proposes to advance in such Process of Division, which Claim may be subject to any Alterations which the Evidence and Pleas of Parties may render necessary.

IV. The Parties who intend to appear in the Process shall lodge Defences in Terms of the said Statute, stating the Nature and Extent of the Right and Interest they mean to advance in the said Common, whether in the whole or in a Portion thereof, the Extent and Boundaries of the Common, if they do not admit the Boundaries stated by the Pursuer, the Lands, if any, within the Pursuer's Boundaries, which they claim as private Property, and as not forming Part of the Common, the Titles under which they maintain such Pleas, and the like, and the Claim they intend to advance in the Process, subject to any Alterations which the Evidence and Pleas of other Parties may render necessary.

V. After such Papers are lodged, the Lord Ordinary shall consider the same, both in reference to the Requirements of the said Statute, and also in order to consider whether any Questions of Law ought to be determined before allowing Proof, or to what Points the Proof should in the first instance be directed; and also with a view to consider whether such Proof should, in whole or in part, be by Commission or before a Jury, or in what other Form; and whether there are any separate and distinct Points which should be so tried before the general Boundaries of the Common are to be remitted to Proof, and between what Parties.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common Form.

DUN. M'NEILL, *I.P.D.*

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*Act of Sederunt as to lodging Reclaiming Notes under the Act 13th and 14th Victoria, Cap. 36.—[Edinburgh, 20th July 1853.]*

Reclaiming Days  
not to expire until  
Box Day.

THE Lords of Council and Session, taking into Consideration the Act passed in the 13th and 14th Years of the Reign of her present Majesty, Cap. 36, Sect. 11, do hereby enact and declare, under the Powers conferred on them by the said Act, that where the Ten Days, therein mentioned, expire

during Vacation or during any Recess of the Court, they shall continue open till the First Box Day in the Vacation, or till the Box Day in the Recess; or if they expire after the Box Day in the Recess, they shall continue open till the First Sederunt Day after the Recess.

And the Lords appoint this Act to be engrossed in the Sederunt Book, and printed and published in the usual manner.

DUN. McNEILL, *I.P.D.*

*Judicial Factors  
in Bankruptcy.*

*Act of Sederunt for regulating the Procedure of judicial Factors under the Statute 19th and 20th Victoria, Cap. 79.*  
—[25th November 1857.]

THE Lords of Council and Session, in pursuance of the Powers vested in them by the 164th and 165th Sections of the Act of Parliament passed in the 19th and 20th Year of her present Majesty's Reign, Cap. 79, intituled, "An Act to amend and consolidate the Laws relating to Bankruptcy in Scotland," do hereby enact and declare, as follows,—

I. That every Petition presented to the Court under Sect. 164 of said Statute, for the Appointment of a judicial Factor on the Estates of Persons deceased, shall be in the Form, and as nearly as may be in the Terms, set forth in the Schedule No. 1, hereto annexed.

Form of Petition.

II. That every such Petition shall be printed and boxed, according to the present Practice, and shall be also boxed for the Accountant in Bankruptcy.

Boxing of  
Petition.

III. Besides Intimation on the Walls and Minute Book in common Form, of which Certificates shall be produced, Intimation shall be made in the *Edinburgh Gazette*, according to the Forms in Schedule No. 2; and a full Copy of the Petition shall be served on such of the Persons named in the Petition, as Representatives of the Deceased, as are not Parties thereto; and a Copy of the *Edinburgh Gazette*, containing the Intimation, and an Execution or Acknowledgment of Service of the Petition, shall be produced before the Petition is disposed of.

Intimation and  
Service.

IV. The Court shall not make the Appointment of the judicial Factor, until the Lapse of Fourteen Days, or such other Time as the Court may fix, after both the Publication of the Notice in the Gazette, and the Date of Service (when such Service is required) of the Petition on the Representatives of the Deceased. Provided, however, that the Court, if in any Case it shall see cause to do so,

Induciae.

Interim Appoint-  
ment.

*Judicial Factors  
in Bankruptcy.*

Caution.

may make an interim Appointment of such Factor at any earlier Date.

V. The judicial Factor, before extracting his Appointment, and entering upon the Administration of the Estate, shall find Caution, to the Satisfaction of the Clerk of Court, for his Intromissions and the due Performance of the Duties of his Office; and on the Bond of Caution being executed it shall be transmitted by the Clerk to the Process to the Accountant in Bankruptcy.

Time for finding  
Caution.

VI. When not otherwise expressed in the Interlocutor appointing the judicial Factor, the Time for finding Caution shall be limited to Three Weeks from the Date of Appointment, the Court reserving Power, on Cause shown by Application made at any Time before the Expiry of that Period, to prorogate the Time for finding Caution; and, in case of Failure to find Caution within the Time thus allowed, the Appointment shall ipso facto fall.

Provision for  
Death or Insol-  
vency of Cau-  
tioner.

VII. On the Death or Insolvency of the Cautioner of any Factor, such Factor, on the same coming to his Knowledge, shall forthwith give Notice in Writing to the Accountant in Bankruptcy of such Death or Insolvency, and the Accountant shall, as soon as the Fact shall come to his Knowledge by Means of such Notice or otherwise, require new Caution to be found.

Duties of Factor.

VIII. The Factor shall immediately, on extracting his Appointment, proceed to inquire into and ascertain the Nature and Extent of the Estate belonging to the Deceased, and shall be entitled to enter into immediate Possession of the same, and of all Writs and Documents of Importance belonging thereto; and he shall make up such Titles to the Estate, heritable and moveable, as shall enable him to manage, dispose of, and realize the same in Terms of the Statute.

Gazette Notices.

IX. In order to ascertain the Claims upon the Estate the Factor shall, within Eight Days of extracting his Appointment, cause to be inserted in the *Edinburgh Gazette*, a Notice, in the Form, or as nearly as may be, set forth in the Schedule No. 3, hereto annexed, and he shall also insert a similar Notice in such Newspapers as may appear to him to be proper.

Proof of Claims.

X. The Factor shall examine the Claims of the Creditors, in order to ascertain whether the Debts are justly due from the Estate of the Deceased, and may call for further Evidence in support of the Claims, and may, if he sees fit, require the Creditors to constitute the same by Decree in a competent Court, in an Action to which the Factor shall be called as a Defender.

XI. The Factor shall, within Six Months at latest from

the Date on which his Appointment shall have been extracted, lodge with the Accountant a full Inventory of the Estate of the Deceased, and shall produce therewith or exhibit all such Writs and Documents of Importance belonging to the Estate as may have been obtained by him, and shall at the same Time report a State of the Debts appearing to be due by the Deceased, distinguishing those for which Claims have been lodged by Creditors, and the Evidence upon which the same rest, and the Claims made and lodged with him by Persons interested in the Succession of the Deceased, and the Grounds thereof, and shall append thereto a Vidimus of the Estate of the Deceased, estimating the probable Value thereof when realized, and the Amount of Claims of Creditors thereon, and of other Persons interested in the Succession; and the said Inventory, when adjusted and signed as after mentioned, with the State of Debts and Vidimus of the Estate, shall remain in the Possession of the Accountant; and all Creditors and Persons interested in the Succession of the Deceased, or their Agents, shall have access to see the same in the Hands of the Accountant, at his Office.

*Judicial Factors  
in Bankruptcy.*

Inventory to be  
lodged, etc.

XII. The Accountant, before adjusting, approving, and signing the Inventory of the Estate lodged by the Factor, shall examine into the same, and call for all necessary Documents, to enable him to ascertain the Circumstances of the Estate and the Sufficiency of the Inventory, so that it may form a clear Rule of Charge against the Factor; and if at any Time thereafter any new Claims, or Property belonging to the Estate, shall be discovered, the Factor shall report the same forthwith to the Accountant, in order to such Addition or Alteration being made on the Inventory as may thereby be rendered necessary.

Accountant to  
examine Inventory.

XIII. The Inventory of the Estate so lodged, when adjusted and approved of by the Accountant, shall be signed by him and the Factor, and shall form the Charge against the Factor; and the Accountant shall then fix within what Period the Factor shall prepare a State of Funds and Scheme of Division, to be considered and approved of by the Court, with Power to the Accountant to prorogate the Time for preparing such State of Funds and Scheme of Division as shall seem to him, having regard to the Circumstances of the Case, to be necessary or expedient.

Scheme of  
Division.

XIV. When the Factor desires special Powers to be granted to him by the Court, he shall submit the Proposal by Note to the Accountant, who, after making such Inquiries as may appear to him to be proper, shall report his Opinion thereon in Writing, and that Report shall be produced with the Application to the Court.

Special Powers.

*Judicial Factors  
in Bankruptcy.*

Accountant to  
report on Scheme  
of Division.

Notices to be  
transmitted to  
Claimants.

Notes of Objec-  
tions to Scheme  
may be lodged.

Court to dispose  
thereof.

XV. When the judicial Factor shall have prepared the State of Funds and Scheme of Division, he shall lay the same before the Accountant, along with all Writings and Documents upon which it proceeds, and shall afford to the Accountant all Explanations thereon which may be required by him. And the Accountant shall make a Report in Writing on the said State of Funds and Scheme of Division, containing such Observations thereon as he shall think fit and proper to be submitted to the Court.

XVI. Immediately on the Accountant's Report being made, the Factor shall lodge the same in Court, and shall transmit to each Person who has lodged with him a Claim on the Estate of the Deceased, a Notice by Post intimating that the State of Funds and Scheme of Division, and Report thereon, have been lodged in Court, and stating the Amount for which the Creditor has been ranked, and whether his Claim is to be paid in full, or by a Dividend, and the Amount thereof, and in case of Claims rejected, stating that Fact; and a Notice, according to the Form in Schedule No. 4, hereto annexed, shall also be inserted in the *Edinburgh Gazette*; and if any Persons, other than those who have lodged Claims with the Factor, shall be stated in the Petition to the Court, or in the Books, Deed of Settlement, or other Papers of the Defunct, to be Creditors of the Estate or interested therein; or if the Factor shall otherwise have reason to believe that other Persons are in either of these Predicaments, he shall give Notice by Letters, through the Post Office, to such Persons, that no Dividend is allotted to them in the Scheme of Dividend.

XVII. All Creditors, and other Persons interested in the Succession of the Deceased, shall be entitled to examine the State of Funds and Scheme of Division lodged in Court, and also the Claims and the Vouchers, or Evidence thereof lodged with the Factor; and any Creditor, or other Person dissatisfied with the State of Funds and Scheme of Division, may lodge a Note of Objections thereto, signed by Counsel, with the Clerk of the Process, within Three Weeks from the last Date of such Notices; and till the Lapse of said Period of Three Weeks, the Court shall not be moved to approve of the State of Funds and Scheme of Division.

XVIII. If Objections are lodged to the State of Funds and Scheme of Division, the Court shall dispose of the same, after hearing Counsel for the objecting Creditors and judicial Factor, and making all necessary Investigation in regard to the same. If the Objections be sustained to any Extent, the necessary Alteration shall be made on the said State and Scheme.

**XIX.** When the Scheme of Division is adjusted, it shall be approved of by the Court; and the Factor shall pay, deliver, or convey to the Parties therein set forth, the Sums or Subjects allocated to them respectively in the said Scheme of Division.

*Judicial Factors  
in Bankruptcy.*

Dividends, how  
to be paid.

**XX.** Where a partial Division of Funds among the Creditors who have claimed may be made with Safety to the Interests of all concerned, the judicial Factor may, with the Approval of the Accountant, prepare a State of the Funds and First Scheme of Division, and that at as early a Period after the Time notified for lodging the Claims of Creditors upon the Estate, as he may be enabled to do it; and the same having been submitted to the Accountant, and reported on by him to the Court, and Notice having been given, in Terms of Section 16, to each Creditor, of such State of Funds and First Scheme of Division having been lodged, the Court may, Six Months having elapsed from the Day of the Death of the Deceased, on considering the same, approve of that Scheme of Division, and the Factor shall pay, deliver, or convey, in Terms thereof; provided always, that Dividends corresponding to the Amount of the Claims of Creditors, whose Debts have not, at that Period, been admitted by the judicial Factor, or whose Debts are future or contingent, and also the full Amount of such Debts as are claimed as preferable, but the Preference is not admitted by the Factor, shall be retained and set apart to meet such Claims, if ultimately sustained, or when the same shall become payable or prestable.

Payment of partial  
Dividend.

Dividends on  
doubtful Claims  
to be set apart.

**XXI.** The judicial Factor shall lodge all the Money coming into his Hands in some One of the Banks in Scotland established by Act of Parliament or Royal Charter, in a separate Account, or on Deposit, such Account or Deposit being in his own Name, as judicial Factor on the Estate; and the Factor shall not keep in his Hands more than L.50 of Money belonging to the Estate for more than Ten Days; and it shall be the Duty of the Accountant to report to the Court any Failure of the Factor in this Respect.

Monies to be  
lodged in char-  
tered Bank.

**XXII.** The Factor shall be entitled, out of the First of the Funds realized by him, and without waiting for the Expiry of Six Months from the Death of the Deceased, to pay the deathbed and funeral Expenses of the Deceased, Rent, Taxes, and such Servants' Wages as are privileged Debts, and Interest becoming due, or past due, to Creditors having Preference over the Estate.

Privileged Debts.

**XXIII.** When the Inventory of the Estates of the Deceased shall be lodged by the Factor with the Accountant,

Factor to lodge  
First Account

*Judicial Factors  
in Bankruptcy.*of Charge and  
Discharge.

a Term shall be fixed by the Accountant for the Factor lodging his First Account of Charge and Discharge of his Intrmissions with the Estate, together with an Account current, showing the State of the Money in his Hands from Day to Day, in order to the same being examined and audited by the Accountant; and so long as the Factor's Management of the Estates continues, he shall, once a Year or oftener, as the Accountant may direct (the Dates to be fixed by the Accountant), render to him similar Accounts of Charge and Discharge of his Intrmissions with the Estate and Accounts current, and which Accounts shall be accompanied with all proper Vouchers, and be audited by the Accountant.

Factor's Commis-  
sion.

XXIV. The Accountant, on auditing the Accounts, shall fix the Amount of the Factor's Commission for the Period embraced by the Audit, and if he has made any Corrections on the Account, he shall, if required by the Factor, explain such Corrections, and his Reasons for making them.

Factor may em-  
ploy Law Agent  
when necessary.

XXV. The Factor, when he shall find it to be necessary to have the Services of a Law Agent in Matters properly belonging to that Profession, shall be entitled to employ One not connected with him as a Partner, whose Accounts shall, by an Order of the Accountant, be submitted to the Auditor of Court for Taxation, reserving to the Accountant to disallow, upon Grounds to be specified by him, the whole or any Part of Accounts incurred to a Law Agent, but such Disallowance to be subject to the Review of the Court, on Objections thereto by the Factor; and a Note of such Objections shall be lodged and boxed within Ten Days of the Accountant's Deliverance being intimated to the Factor, or his known Agent.

Audit of Ac-  
counts.Payment of  
Accountant's  
Outlay.

XXVI. Any Outlays incurred by the Accountant, in regard to special Reports made by him to the Court, shall, by Order or Decree of the Court, form a Charge against the Estate, and shall be satisfied and paid by the Factor, the Account for such Outlays being first audited by the Auditor of Court, unless the Court shall see cause to subject the Factor personally in the whole or any Part of such Outlay of the Accountant, in which Case the Factor shall be bound to relieve the Estate of such Outlay.

Penalty on Fac-  
tor for Failure  
in Duty.

XXVII. If the Factor shall misconduct himself, or fail in the Discharge of his Duty, he shall be liable to the Forfeiture of the whole or any Part of his Commission, and to removal from his Office, and to Payment of Expenses, or to One or more of these Penalties, as the Court may determine, besides being liable in Reparation of any Loss or Damage sustained by the Estate in consequence of his Misconduct or Failure.



XXVIII. When the Factor shall apply to the Court for his Discharge, he shall present a Petition to the Court, with a Report by the Accountant regarding his Management of the Estate, and his Right to be discharged of his Office. That Petition shall be intimated to the Representatives of the Deceased; and a Notice thereof shall be inserted in the *Edinburgh Gazette*, in the Terms of the Schedule No. 5, hereto annexed; and the Petition shall not be disposed of until the Lapse of Fourteen Days after such Publication in the Gazette; and after such Inquiry as may be necessary, the Court shall dispose of the Petition; and, if the Court shall grant the Discharge, they shall order the Bond of Caution to be delivered up.

*Judicial Factors  
in Bankruptcy.*

Discharge of  
Factor.

XXIX. All Proceedings which in this Act are appointed to take place by or before the Court, shall, although the same be addressed to the Lords of Council and Session, be brought before, dealt with and disposed of by, the junior Lord Ordinary officiating in the Outer House, or by the Lord Ordinary officiating on the Bills in Time of Vacation, subject to the Review of the Inner House, in conformity with the 4th Section of the Statute 20th and 21st *Victoria*, Cap. 56.

Procedure to be  
before junior  
Lord Ordinary.

And the Lords appoint this Act to be engrossed in the Books of Sederunt, and to be printed and published in the usual Form.

DUN. McNEILL, I.P.D.

## APPENDIX.

### No. 1.

Division.  
Clerk.

Unto the Right Honourable the Lords of Council and Session,

The PETITION of [*here state the Names and Designations of the Petitioners, and whether they apply in the Character of Creditors or of Persons having Interest in the Succession of the Party deceased*].

Humbly sheweth,

That [*naming and designing the Party deceased*], died on the \_\_\_\_\_ Day of \_\_\_\_\_, and left no Settlement, appointing Trustees, or other Parties to manage his Estate, or Part thereof (or *that the Trustees, or other Parties appointed by him to manage his Estate, have not accepted or acted*).

That the Petitioner (or Petitioners), [*here state, if Creditors, the Nature and Amount of the Debt due to them by the Deceased; and how constituted, vouched, or established, and referring to the Evidence of the Existence of the Debt, as produced with the Petition; or, if Persons having an Interest in the Succession, the Nature of their Interest in the Succession*].

That the Estate of the said deceased \_\_\_\_\_, so far as known to the Petitioner (or Petitioners), consists of [*here state the Nature of the Estate, whether of heritable or moveable, Stock in Trade, Interest in a Partnership, professional Business, or whatever else it may be.—State any other Facts which may appear to be of Importance in the particular Case*].

That the following Persons are, to the best of the Petitioner's Knowledge and Belief, the legal Representatives of the Deceased, or have an Interest in his Estate. [*Here state the Names and Designations of those Persons, their Degree of Relationship, or the Nature of their Interest in the Succession.*]

That the following Persons are, to the best of the Petitioner's Knowledge and Belief, all the Creditors of the Deceased [*name and design them*].

That the Petitioner is (or Petitioners are) entitled, under Section 164 of the "Bankruptcy (Scotland) Act, 1856," to make the present Application for the Appointment of a judicial Factor over the Estate of the said Deceased, with the Powers therein conferred.

May it therefore please your Lordships to appoint Intimation of this Petition to be made on the Walls, and in the Minute Book, in common Form, and in the *Edinburgh Gazette*, and otherwise in such other Form and Way, and to such Persons as to your Lordships may seem fit; and thereafter, on resuming Consideration of the same, to appoint such fit Person as to your Lordships shall seem proper to be judicial Factor on the Estate of the said deceased; and that, with all the Powers of the Statute; he always finding Caution before Extract; or to do otherwise in the Premises, as to your Lordships shall seem proper.

(Signed by Counsel.)

#### No. 2.

##### NOTICE TO BE INSERTED IN THE "EDINBURGH GAZETTE."

To the Creditors and other Persons interested in the Succession of the deceased  
(naming and designing him).

A PETITION has been presented to the Court of Session, Division, Mr Clerk, by a Creditor (or Creditors), to the Amount required, [or by ], the said Deceased having left no Settlement appointing Trustees, or other Parties having Power to manage his Estate (or, as the Case may be, the Trustees, under the Deceased's Settlement, not accepting or acting), praying, under the Act 19 & 20 Vict., cap. 79, § 164, for the Appointment of a judicial Factor upon said Estate; and which Petition will be again moved in Court, on or after the Day of , of all which Notice is hereby given.

(Date.)

(Signature of Petitioner's Agent, and adding his Place of Business.)

#### No. 3.

To the Creditors and other Persons interested in the Succession of the deceased  
(designing him).

A. B. (naming and designing him), having been appointed by the Court of Session judicial Factor on the Estate of the said deceased

under the Act 19 & 20 Vict., cap. 79, § 164, requires all the lawful Creditors of the said and other Persons interested in his Estate, to lodge with the judicial Factor,

within Four Months after the Date of this Notice, a Statement of their Claims as Creditors of the Deceased, or as otherwise interested in his Estate; with such Vouchers or other written Evidence as they may have to found upon in support of their Claims; in order to the same being considered and reported upon by the judicial Factor.

(Date.)

(Signature and Address of judicial Factor.)

**To the Creditors and other Persons interested in the Succession of the deceased  
(designing him).**

*(Signature and Address of judicial Factor.)*

To the Creditors and other Persons interested in the Succession of the deceased  
(*designing him*).

*(Signature and Address of judicial Factor.)*

*Act of Sederunt respecting Countermand of Notices of Trial in Jury Causes.*—[Edinburgh, 22d June 1859.] *Notice of Trial.*

**THE Lords of Council and Session, considering that much Inconvenience arises from the Exercise of the Right of countermanding Notices of Trial in Jury Causes according to the existing Practice, under the Act of Sederunt of 24th February 1846, enact and declare :—**

That from and after the Date hereof, when a Notice of Trial has been given by either Party in a Cause for the Sittings after the Winter Session of the Court, or for the Sittings after the Summer Session of the Court, or for the Sittings in the Christmas Recess, it shall not be competent to countermand such Notice after the Expiry of the Time within which Notices of Trial require to be given for such Sittings: Provided always, that it shall be competent to either Party, after the Expiry of such Time, to apply to the Court to postpone the Trial, for any Cause which could not have been foreseen previous to the Expiry of such Time: And it shall also be competent to make such Application, after the Termination of the Session, to the Judge who is to preside at the Trial, or, in his Absence, to the Lord Ordinary on the Bills, it being shown to the Satisfaction of such Judge or Lord Ordinary that the Application could not have been made to the Court during Session.

Restriction on Power to countermand Notice of Trial.

And the Lords appoint this Act to be engrossed in the

*Production of  
Registers.*

Books of Sederunt, and printed and published in the usual  
Manner. DUN. M'NEILL, *I.P.D.*

*Act of Sederunt as to Production of Registers under the  
Custody of the Registrar General.*—[Edinburgh, 16th July  
1859.]

THE Lords of Council and Session, considering that it is sometimes necessary, for the Ends of Justice, that original Registers in the Custody of the Registrar General shall be produced in Evidence, but that it is necessary, for the Safety of such Registers, that Parties shall not be at Liberty to recover them under Diligence, or to borrow them on Receipt or obtain them to be produced, except under certain Regulations, do hereby enact :—

Registers not to  
be recovered  
under Diligence.

That no Party or Parties to any Action shall be entitled, in virtue of a Diligence or otherways, to obtain from the Registrar General Production of the Originals of any of the Registers placed under his Custody by the 17th and 18th Vict., Cap. 80, except under the Authority of the Court of Session, applied for and obtained in the following Manner :—

Application to be  
made to Court or  
to Lord Ordinary  
in Vacation.

I. All Applications for such Purpose shall, during Session, be made to the Court in the usual Way, and shall, during Vacation, be made to the Judge or Lord Ordinary, by Motion, in the Way and Manner set forth in the 21st Section of the Act of Sederunt of 16th February 1841, and in either Case due Notice of the Application shall be given to the Registrar General.

Register to be  
produced in Custody  
of Officer.

II. If it shall appear to the Court, or to the Judge or Lord Ordinary, that it is necessary, for the Ends of Justice, that such Application should be granted, Authority shall be given for the Production, and the Registers, to be produced in virtue of such Authority, shall be exhibited to the Court or to the Jury before which the Cause is tried, under the Custody of an Officer to be selected by the Registrar General, by whom they shall be restored to the Custody of the Registrar General, when the Purposes for which they have been so exhibited shall have been answered.

Expenses.

III. The Expense attending the Transmission and Exhibition of such Registers shall be defrayed, in the First Instance, by the Party or Parties on whose Application the Proceeding takes place.

And the Lords appoint this Act to be engrossed in the Books of Sederunt, and printed and published in the usual Manner. DUN. M'NEILL, *I.P.D.*

*Act of Sederunt as to the calling of Summonses, Advocations, and Suspensions, and the printing of Records.*—[Edinburgh, 5th February 1861.]

THE Lords of Council and Session, considering that, by the Act 13 & 14 Vict., c. 36, Section 54, the Court is empowered to make Regulations for the purpose of carrying into effect the Purposes of the said Act, and, in particular, “to make Regulations for allowing Summonses, and Notes of Advocation and of Suspension, and of Suspension and Interdict, and of Suspension and Liberation, to be called at any Box Day in Vacation or Recess, and making Defences returnable at such Box Days, or on the meeting of the Lords Ordinary, or of the Court after Vacation or Recess,” do hereby enact and declare :—

I. That from and after the passing of this Act of Sederunt, all Summonses of which the induciæ shall have run, and all Notes of Advocation and Suspension, and of Suspension and Interdict, and of Suspension and Liberation, after the Period of Intimation shall have expired, may be called upon any Box Day in Vacation or Recess, in like Form and Manner as they are now called weekly in Time of Session ; the Week in which a Box Day occurs being to this effect held as a Session Week, and such Callings shall be made and followed out in all respects as is provided for Callings in Time of Session by the 26th, 27th, and 28th Sections of the Act of Sederunt of 11th July 1828.

II. That when Cases are called on a Box Day as aforesaid, Appearance may be entered for Defenders, Respondents, or Chargers, at any Time between the Hours of Eleven and Two o'clock of the Calling Day, or of the Day following.

III. That when Summonses are called during Session, or on a Box Day in Vacation or Recess, and Appearance is entered, the Process shall be returned with Defences on or before the Thirteenth Day thereafter, if that Period shall expire in Time of Session ; and if the Thirteen Days shall expire in Vacation or Recess, on the next ensuing Box Day, or on the First Day of the next Sittings of the Lords Ordinary, whichever shall first happen ; and if Defences are not returned at the Times above specified respectively, the Clerk, if required, shall grant a Warrant of Enrolment, as if no Appearance had been entered.

IV. That in like Manner, when Notes of Advocation or Suspension, or of Suspension and Interdict, or Suspension and Liberation, are called during Session, or on a Box Day in Vacation or Recess, and Appearance is entered, the Process shall be returned by the Respondent or Charger on or before the Thirteenth Day thereafter, if that Period shall

expire in Time of Session ; and if the Thirteen Days shall expire in Vacation or Recess, on the next ensuing Box Day, or on the First Day of the next Sitzings of the Lord Ordinary, whichever shall first happen.

V. That in every Advocation or Suspension of a final Judgment of an Inferior Court where a Record has been made up and closed, it shall be competent to the Complainer, if he think fit, to lodge a Note of Pleas in Law when the Case is called, either in Time of Session or on any Box Day in Vacation or Recess ; and it shall also be competent for the Respondent or Charger, when he returns the Process, to lodge a similar Note of Pleas ; and upon this being done, the Record may be declared closed.

VI. That where, by the existing Practice, Notes of Advocation or Suspension require to be lodged in the Bill Chamber, containing an articulate Statement of Facts and Pleas in Law, and are followed by Answers prepared in a similar Form, and such Notes are passed by the Lord Ordinary, the Complainer shall lodge Revised Reasons of Advocation or Revised Reasons of Suspension, as the Case may be, when the Cause is called either in Time of Session or on any Box Day in Vacation or Recess ; and, on the other hand, the Respondent or Charger shall lodge Revised Answers when he returns the Process as aforesaid.

VII. That every Record which is closed, or held to be closed, in the Outer House, shall, unless the Lord Ordinary otherwise appoint, be printed : and the Interlocutor closing the Record, or holding the same to be closed, shall, in all Cases, be held to be an Appointment to print the same, unless the contrary be expressed in the Interlocutor.

VIII. That the Record shall be printed by the Pursuer, Advocate, or Suspender, and in the Case of a Multiplepointing by such Claimant as the Lord Ordinary may appoint, at the joint Expense of the Parties ; and, unless it be otherwise ordered by the Lord Ordinary, the Number of Copies printed shall be such as shall afford Thirty Copies to the Pursuer or Pursuers, or, in the Case of a Multiplepointing, Thirty Copies to each Claimant or set of Claimants uniting in a Claim ; and Thirty Copies to the Defender or the Defenders, where uniting in One Defence ; and where separate Defences are given in, Thirty Copies to each Defender or set of Defenders giving in a separate Defence ; and the like in Advocations and Suspensions ; and the Expense of Printing shall be divided amongst the Parties in the same Proportion.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common Form.

DUN. McNEILL, *I.P.D.*

SUPPLEMENT  
TO THE  
PUBLIC GENERAL STATUTES, &c.,  
RELATING TO  
PROCEDURE IN THE  
COURTS OF EXCHEQUER, SESSION,  
AND TEINDS.

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24<sup>th</sup> VICTORIÆ REGINÆ.

CAP. XI.

*An Act to afford Facilities for the better Ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions.*—[17th May 1861.]

WHEREAS an Act was passed in the Twenty-second and Twenty-third Years of Her Majesty's Reign, intituled *An Act to afford Facilities for the more certain Ascertainment of the Law administered in one Part of Her Majesty's Dominions when pleaded in the Courts of another Part thereof*: And whereas it is expedient to afford the like Facilities for the better Ascertainment, in similar Circumstances, of the Law of any Foreign Country or State with the Government of which Her Majesty may be pleased to enter into a Convention for the purpose of mutually ascertaining the Law of such Foreign Country or State when pleaded in Actions depending in any Courts within Her Majesty's Dominions and the Law as administered in any Part of Her Majesty's Dominions when pleaded in Actions depending in the Courts of such Foreign Country or State: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament as-

22 & 23 Vict., c. 63.

*Remit for Opinion.*

Superior Courts within Her Majesty's Dominions may remit a Case, with Queries, to a Court of any Foreign State with which Her Majesty may have made a Convention for that Purpose, for Ascertainment of Law of such State.

Court in which Action depends to apply such Opinion to the Facts set forth in Cases, &c.

sembled, and by the Authority of the same, as follows: viz.,

I. If, in any Action depending in any of the Superior Courts within Her Majesty's Dominions, it shall be the Opinion of such Court that it is necessary or expedient, for the Disposal of such Action, to ascertain the Law applicable to the Facts of the Case as administered in any Foreign State or Country with the Government of which Her Majesty shall have entered into such Convention as aforesaid, it shall be competent to the Court in which such Action may depend to direct a Case to be prepared setting forth the Facts as these may be ascertained by Verdict of Jury or other Mode competent, or as may be agreed upon by the Parties, or settled by such Person or Persons as may have been appointed by the Court for that Purpose in the event of the Parties not agreeing; and upon such Case being approved of by such Court or a Judge thereof, such Court or Judge shall settle the Questions of Law arising out of the same on which they desire to have the Opinion of another Court, and shall pronounce an Order remitting the same, together with the Case, to such superior Court in such Foreign State or Country as shall be agreed upon in said Convention, whose Opinion is desired upon the Law administered by such Foreign Court as applicable to the Facts set forth in such Case, and requesting them to pronounce their Opinion on the Questions submitted to them; and upon such Opinion being pronounced, a Copy thereof, certified by an Officer of such Court, shall be deemed and held to contain a correct Record of such Opinion.

II. It shall be competent to any of the Parties to the Action, after having obtained such certified Copy of such Opinion, to lodge the same with the Officer of the Court within Her Majesty's Dominions in which the Action may be depending who may have the official Charge thereof, together with a Notice of Motion setting forth that the Party will, on a certain Day named in such Notice, move the Court to apply the Opinion contained in such certified Copy thereof to the Facts set forth in the Case hereinbefore specified, and the said Court shall thereupon, if it shall see fit, apply such Opinion to such Facts, in the same Manner as if the same had been pronounced by such Court itself upon a Case reserved for Opinion of the Court, or upon Special Verdict of a Jury; or the said last-mentioned Court shall, if it think fit, when the said Opinion has been obtained before Trial, order such Opinion to be submitted to the Jury with the other Facts of the Case as conclusive Evidence of the Foreign Law therein stated, and the said Opinion shall be so submitted to the Jury: Provided



always, that if after having obtained such certified Copy the Court shall not be satisfied that the Facts had been properly understood by the Foreign Court to which the Case was remitted, or shall on any Ground whatsoever be doubtful whether the Opinion so certified does correctly represent the Foreign Law as regards the Facts to which it is to be applied, it shall be lawful for such Court to remit the said Case, either with or without Alterations or Amendments, to the same or to any other such Superior Court in such Foreign State as aforesaid, and so from Time to Time as may be necessary or expedient.

Procedure on Remit.

Courts in Her Majesty's Dominions may pronounce Opinion on Case remitted by a Foreign Court.

III. If in any Action depending in any Court of a Foreign Country or State with whose Government Her Majesty shall have entered into a Convention as above set forth, such Court shall deem it expedient to ascertain the Law applicable to the Facts of the Case as administered in any Part of Her Majesty's Dominions, and if the Foreign Court in which such Action may depend shall remit to the Court in Her Majesty's Dominions whose Opinion is desired a Case setting forth the Facts and the Questions of Law arising out of the same on which they desire to have the Opinion of a Court within Her Majesty's Dominions, it shall be competent to any of the Parties to the Action to present a Petition to such last-mentioned Court, whose Opinion is to be obtained, praying such Court to hear Parties or their Counsel, and to pronounce their Opinion thereon in Terms of this Act, or to pronounce their Opinion without hearing Parties or Counsel; and the Court to which such Petition shall be presented shall consider the same, and, if they think fit, shall appoint an early Day for hearing Parties or their Counsel on such Case, and shall pronounce their Opinion upon the Questions of Law as administered by them which are submitted to them by the Foreign Court; and in order to their pronouncing such Opinion they shall be entitled to take such further Procedure thereupon as to them shall seem proper, and upon such Opinion being pronounced a Copy thereof, certified by an Officer of such Court, shall be given to each of the Parties to the Action by whom the same shall be required.

IV. In the Construction of this Act the Word "Action" shall include every judicial Proceeding instituted in any Court, Civil, Criminal, or Ecclesiastical; and the Words "Superior Courts" shall include, in *England*, the Superior Courts of Law at *Westminster*, the Lord Chancellor, the Lords Justices, the Master of the Rolls, or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate; in *Scotland*, the

Interpretation of Terms.

Jurisdiction.

High Court of Justiciary, and the Court of Session, acting by either of its Divisions; in *Ireland*, the Superior Courts of Law at *Dublin*, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other Part of Her Majesty's Dominions, the Superior Courts of Law or Equity therein; and in a Foreign Country or State, any Superior Court or Courts which shall be set forth in any such Convention between Her Majesty and the Government of such Foreign Country or State.

24° & 25° VICTORIÆ REGINÆ.

CAP. LXXXVI.

[Am. St. 1578, c. 55; 1 W. 4, c. 69; 6 & 7 W. 4, c. 41.]

*An Act to amend the Law regarding Conjugal Rights in Scotland.*—[6th August 1861.]

WHEREAS it is expedient to amend the Law of *Scotland* relating to Husband and Wife: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

A Wife deserted by her Husband may apply for an Order to protect Property which she has or may acquire by her own Industry, or which she may succeed to.

I. A Wife deserted by her Husband may, at any Time after such Desertion, apply by Petition to any Lord Ordinary of the Court of Session, or in the Time of Vacation to the Lord Ordinary on the Bills, for an Order to protect Property which she has acquired or may acquire by her own Industry after such Desertion, and Property which she has succeeded to or may succeed to or acquire Right to after such Desertion, against her Husband or his Creditors, or any Person claiming in or through his Right; and the Lord Ordinary shall appoint such Petition to be intimated in the Minute Book of the Court of Session, and to be served upon the Husband; and the Husband, or any Creditor of the Husband, or any other Person claiming in or through his Right, shall be entitled to lodge Answers to the said Petition, and if the Husband be furth of *Scotland*, the Petition shall be executed edictally against him on an Induciae of Twenty-one Days; and upon considering such Petition the Lord Ordinary shall require Evidence of such Desertion, and on being satisfied thereof pronounce an Interlocutor giving to the Wife Protection of her Property as aforesaid against the Husband and all Creditors or Persons claiming under or through him; and if Answers be lodged to the said Petition, the Lord Ordinary may, on

considering the same, and, if he consider it necessary, after hearing Parties, allow a Proof to them of their respective Averments, which Proof he shall take himself, and either write the Evidence with his own Hand, in which Case it shall be read over to the Witness by the Judge, and signed by the Witness, if he can write, or the Lord Ordinary shall record the Evidence by dictating it to a Clerk, in which Case it shall, when taken down, be read over and signed as above; or the Lord Ordinary shall cause the Evidence to be taken down and recorded by a Writer, skilled in Shorthand Writing, in Manner after mentioned, and it shall be competent to the Lord Ordinary, on special Cause shown, instead of taking such Proof, to grant a Commission to take said Proof elsewhere than in *Edinburgh*, in which Case he may pronounce an Interlocutor setting forth such special Cause, and granting Commission to take such Proof, and if satisfied after Proof of the Fact of such Desertion, and that the same was without reasonable Cause, he shall pronounce an Interlocutor giving to the Wife Protection as aforesaid, and he shall appoint Intimation of the said Interlocutor having been pronounced to be made in One or more Newspapers published within the County within which the Wife is resident, or in such other Newspapers as the Lord Ordinary may appoint.

Order of Protection.

*Infra*, § 13.

II. It shall be lawful for the Husband, or any Creditor or other Person claiming in or through his Right, if such Creditor, Husband, or other Person have not lodged Answers as aforesaid, to apply by Petition to the Lord Ordinary by whom such Order was made for the Recal thereof; and the Lord Ordinary shall appoint such Petition to be answered by the Wife, and thereafter dispose of the Application as he shall think just; but such Recal shall not affect any Right or Interest onerously and *bonâ fide* acquired by any Third Party from the Wife before said Recal; and the Lord Ordinary shall direct that Publication of his Interlocutor be made in Manner hereinbefore provided.

Husband or Creditor may apply by Petition for Recal of Order.

*Infra*, § 8.

III. All Interlocutors of the said Lord Ordinary may be brought under Review of either Division of the Court of Session, by lodging and boxing within Twenty-one Days after the pronouncing of such Interlocutors, if in Session; and if the said Twenty-one Days shall expire during Vacation, by lodging in the Bill Chamber a Reclaiming Note and boxing the same at the First Box Day after the Expiry of the said Twenty-one Days: Provided always, that, notwithstanding such Reclaiming Note, the Interlocutor of the Lord Ordinary granting Protection shall take effect when intimated as aforesaid, unless the

Interlocutors may be reviewed.

How long Order of Protection to continue operative.

See 6 G. 4, c. 120, § 18; A. of S. 11 July 1828, § 77, 110.

Order of Protection.

No Action of Adherence competent while Order subsists.

*Infra*, § 4, 5.

After Interlocutor of Protection is pronounced, Property of Wife to belong to her as if unmarried.

Order of Protection to have Effect of Decree of Separation.

In case of Separation the Property of the Wife to belong to her exclusively of the Jus

Lord Ordinary, either at the Time of the pronouncing thereof or within Forty-eight Hours thereafter, order that his Interlocutor shall not take effect till the advising of the Reclaiming Note, or such other Period as he may think fit; and such Order of Protection shall, where there has been Appearance by the Husband, continue operative until such Time as the Wife shall again cohabit with her Husband, or until the Lord Ordinary, upon a Petition by the Husband, shall be satisfied that he has ceased from his Desertion, and cohabits with his Wife; and the Lord Ordinary may require him to find Security for such Period as may be appointed, that he shall continue to cohabit with her; and upon the Lord Ordinary being so satisfied, and Security found, if required, he shall recal the Order of Protection; but such Recal shall not affect any Right or Interest acquired by the Wife while the said Order subsisted, which Right and Interest shall remain vested in her, exclusive of her Husband's Jus mariti and Right of Administration; nor shall it affect any Right or Interest acquired by a Third Party during such Period, or any Third Party through or from her, while the said Order subsisted; and until such Order be recalled it shall not be competent for the Husband to institute an Action of Adherence against his Wife; and the Lord Ordinary shall direct that Publication of its Recal be made in Manner herein-before provided.

IV. After an Interlocutor of Protection is pronounced, and duly intimated, the Property of the Wife as aforesaid shall belong to her as if she were unmarried: Provided always, that such Protection shall not extend to Property acquired by the Wife of which the Husband or his Assignee or Disponee has before the Date of presenting said Petition obtained full and complete lawful Possession, nor shall such Protection affect the Right of any Creditor of the Husband over Property which he has before the Date thereof duly attached by Arrestment, followed by a Decree of Forthcoming, or which such Creditor has before the said Date duly pointed, and of which he has carried through and reported a Sale.

V. If any such Order of Protection be made and intimated, it shall have the Effect of a Decree of Separation *a mensâ et thoro* in regard to the Property, Rights, and Obligations of the Husband and of the Wife, and in regard to the Wife's Capacity to sue and be sued.

VI. After a Decree of Separation *a mensâ et thoro* obtained at the Instance of the Wife, all Property which she may acquire, or which may come to or devolve upon her, shall be held and considered as Property belonging to her,

in reference to which the Jus mariti and Husband's Right of Administration are excluded, and such Property may be disposed of by her in all respects as if she were unmarried, and on her Decease the same shall, in case she shall die intestate, pass to her Heirs and Representatives, in like Manner as if her Husband had been then dead: Provided that if any such Wife should again cohabit with her Husband all such Property as she may be entitled to when such Cohabitation shall take place shall be held to her separate Use, and the Jus mariti and Right of Administration of her Husband shall be excluded in reference thereto, subject, however, to any Agreement in Writing made between herself and her Husband; and the Wife shall, while so separate, be capable of entering into Obligations, and be liable for Wrongs and Injuries, and be capable of suing and being sued, as if she were not married; and her Husband shall not be liable in respect of any Obligation or Contract she may have entered into, or for any wrongful Act or Omission by her, or for any Costs she may incur as Pursuer or Defender of any Action, after the Date of such Decree of Separation and during the Subsistence thereof: Provided that where upon any such Separation Aliment has been decreed or ordered to be paid to the Wife and the same shall not be duly paid by the Husband, he shall be liable for Necessaries supplied for her Use.

*Consistorial  
Procedure.*

mariti and Right of  
Administration;

*Supra*, § 8.

also for Purposes  
of Contract and  
suing.

VII. In every Action of Divorce for Adultery at the Instance of the Husband it shall be competent to cite, either at the Commencement or during the Dependence thereof, as a Co-Defender along with the Wife, the Person with whom she is alleged to have committed Adultery; and it shall be lawful for the Court in such Action to decern against the Person with whom the Wife is proved to have committed Adultery for the Payment of whole or any Part of the Expenses of Process, provided he has been cited as aforesaid, and the same shall be taxed as between Agent and Client: Provided always, that it shall be competent to examine the Person with whom the Wife is said to have committed Adultery as a Witness in the Cause, notwithstanding he is called as a Co-Defender in the Action, and in the Power of the Court, on Cause shown, to dismiss such Action as regards such Co-Defender, if in their Opinion such a Course is conducive to the Justice of the Case.

In Action of  
Divorce Adultery  
to be Co-Defender.

*See* 16 V. c. 20, § 8.

VIII. It shall be competent to the Lord Advocate to enter Appearance as a Party in any Action of Declarator of Nullity of Marriage or of Divorce; and it shall be competent to him to lead such Proof and maintain such Pleas

Lord Advocate  
may enter Appearance  
in Actions for  
Nullity of Marriage  
and Divorce.

Consistorial  
Procedure.

In Action for Separation, Court may make Interim Orders with respect to Children.

In every Consistorial Action the Summons to be served on Defender personally when not within Scotland.

Not necessary to institute an Action of Adherence against Defender prior to Action for Divorce.

Am. St. 1573, c. 55.

Terce claimable from Burgage Property.

*Infra*, § 21.

Lord Ordinary to take Proofs in Consistorial Actions.

1 W. 4, c. 69, § 41;  
6 & 7 W. 4, c. 41,  
§ 2.

as he may consider warranted by the Circumstances of the Case; and the Court shall, whenever they consider it necessary for the proper Disposal of any Action of Declarator of Nullity of Marriage or of Divorce, direct that it be laid before the Lord Advocate, in order that he may determine whether he should enter Appearance therein; and Expenses shall not be claimable by or against the Lord Advocate with reference to such Cases.

IX. In any Action for Separation *à mens et thoro* or for Divorce the Court may from Time to Time make such Interim Orders, and may, in the Final Decree, make such Provision as to it shall seem just and proper with respect to the Custody, Maintenance, and Education of any Pupil Children of the Marriage to which such Action relates.

X. In every Consistorial Action the Summons shall be served upon the Defender personally, when he is not resident within *Scotland*: Provided always, that if it be shown to the Satisfaction of the Court that the Defender cannot be found, Edictal Citation shall be deemed sufficient; but in every Case where the Citation is edictal the Pursuer shall also serve the Summons on the Children of the Marriage, if any, and on one or more of the Next of Kin of the Defender, exclusive of the Children of the Marriage, when the said Children and Next of Kin are known, and resident within the United Kingdom, and such Children and Next of Kin, whether cited or so resident or not, may appear and state Defences to the Action.

XI. It shall not be necessary, prior to any Action for Divorce, to institute against the Defender any Action of Adherence, nor to charge the Defender to adhere to the Pursuer, nor to denounce the Defender, nor to apply to the Presbytery of the Bounds, or any other Judicature, to admonish the Defender to adhere.

XII. The Widow of any Person who shall, after the passing of this Act, die infest in Property held by Burgage Tenure shall be entitled to Terce therefrom; and the like Proceedings as to Service and Kenning before the Sheriff shall be competent in such a Case as are competent with reference to Property in respect of which Terce might have been claimed prior to the passing of this Act.

XIII. The Forty-first Section of the Act of the First Year of His late Majesty *William* the Fourth, Chapter Sixty-nine, in so far as it enacted that "it shall be lawful for His Majesty's Principal Secretary of State for the Home Department to appoint from Time to Time such Number of Persons, being Sheriffs-Depute of Counties, as he shall think fit, to take Proofs in Consistorial Causes, which Duty the Persons so appointed shall

Consistorial  
Procedure.

perform;" and the Second Section of the Act of the Sixth and Seventh Years of His late Majesty *William* the Fourth, Chapter Forty-one, shall be and the same are hereby repealed; and in place thereof it is hereby enacted, That where Proof in Consistorial Actions shall be allowed, a Diet of Proof shall be appointed, at which the Evidence shall be led before the Lord Ordinary, and he shall take himself, and either write down with his own Hand the oral Evidence, in which Case it shall be read over to the Witness by the Judge in open Court, and shall be signed by the Witness, if he can write, or the Lord Ordinary shall record the Evidence by dictating it to a Clerk, in which Case it shall, in like Manner, be read over and signed; or the Lord Ordinary shall cause it to be taken down and recorded in Shorthand by a Writer skilled in Shorthand Writing, to whom the Oath *De fidei administratione officii* shall be administered, and the Lord Ordinary may, if he think fit, dictate to the Shorthand Writer the Evidence which he is to record; and the said Shorthand Writer shall afterwards write out in full the Evidence so taken by him; and the Notes of the Judge, or the extended Notes of such Writer, certified by the presiding Judge to be correct, shall be the Record of the oral Evidence in the Cause; and the Lord Ordinary shall take a Note of the Documents adduced, and any Evidence, whether oral or written, tendered and rejected, with the Ground of such Rejection; and any Ruling of the Lord Ordinary in reference to the Admission or Rejection of Evidence may be recalled or altered by the Inner House, under a Reclaiming Note against the final Interlocutor of the Lord Ordinary, disposing of the Merits of the Cause; and the Diet of Proof may be adjourned by the Lord Ordinary, if he shall consider it proper and reasonable so to do; but the Proofs shall be taken as far as may be continuously, and with as little Interval as the Circumstances or the Justice of the Case will admit of: Provided always, that it shall be competent to the Lord Ordinary, where any Witness or Haver is resident beyond the Jurisdiction of the Court, or by reason of Age, Infirmary, or Sickness is unable to attend the Diet of Proof, to grant Commission to any Person competent to take and report in Writing, according to the existing Practice, the Evidence of such Witness or Haver.

1 W. 4, c. 69, § 85.

See A. of S. 16 Feb. 1841, § 17.

XIV. The Commissioners of Her Majesty's Treasury shall annually pay to each of *John Cay* Esquire, Sheriff of the County of *Linlithgow*, *John Tait* Esquire, Sheriff of the Counties of *Kinross* and *Clackmannan*, *Erskine Daniel Sandford* Esquire, Steward of the Stewartry of *Kirkcudbright*, and Sheriff of the County of *Wigton*, *Robert Hunter*

Payment to certain Sheriffs.

Alimentary  
Provisions.

Esquire, Sheriff of the Counties of *Dumbarton* and *Bute*, and *Benjamin Robert Bell* Esquire, Sheriff of the Counties of *Banff*, *Elgin*, and *Nairne*, out of Monies to be voted by Parliament for that Purpose, a Sum equal to One Fifth of the total Amount which shall be ascertained by the Queen and Lord Treasurer's Remembrancer in Exchequer to have been paid annually, on an Average of the last Three Years, to the Sheriffs Commissary, in respect of Proofs taken by them in Consistorial Causes; but such Sum shall only be paid as long as the said Persons shall hold the Office of Sheriff in any County in *Scotland*, and no longer.

Actions of Aliment.  
See 1 W. 4, c. 69, §  
82; A. of S. 11 July  
1828, § 98-100.

XV. Actions of Aliment in the Court of Session between Husband and Wife shall not be considered Inner House Causes, but shall be considered and disposed of in like Manner as other Consistorial Causes, except as hereinafter provided as to Decrees in Absence; and Actions of Aliment at the Instance of other Parties shall not be considered Inner House Causes, but shall be disposed of by the Lord Ordinary (subject in both Cases to Reclaiming Note in common Form against his Interlocutors) in the same Way as such Causes are at present disposed of by the Judges of the Inner House: Provided always, that all Actions for Aliment shall be deemed Summary Causes both in the Outer and in the Inner House, and that where no Appearance is entered for the Defender, Decree shall be pronounced in Absence without Proof, as in other Cases before the Court of Session.

When a married  
Woman succeeds  
to Property, etc.,  
Husband or Creditor  
not entitled  
to claim the same.

XVI. When a married Woman succeeds to Property, or acquires Right to it by Donation, Bequest, or any other Means than by the Exercise of her own Industry, the Husband or his Creditors, or any other Person claiming under or through him, shall not be entitled to claim the same as falling within the *Communio bonorum*, or under the *Jus mariti* or Husband's Right of Administration, except on the Condition of making therefrom a reasonable Provision for the Support and Maintenance of the Wife, if a Claim therefor be made on her Behalf; and in the event of Dispute as to the Amount of the Provision to be made, the Matter shall, in an ordinary Action, be determined by the Court of Session according to the Circumstances of each Case, and with reference to any Provisions previously secured in favour of the Wife, and any other Property belonging to her exempt from the *Jus mariti*: Provided always, that no Claim for such Provision shall be competent to the Wife if before it be made by her the Husband or his Assignee or Disponee shall have obtained complete and lawful Possession of the Property, or, in the Case of a Creditor of the Husband, where he has before such Claim



is made by the Wife attached the Property by Decree of Adjudication or Arrestment, and followed up the said Arrestment by obtaining thereon Decree of Furthcoming, or has pointed and carried through and reported a Sale thereof.

*Alimentary  
Provisions, etc.*

XVII. The Court of Session are hereby authorized and empowered to make from Time to Time such Orders and Regulations as to Forms of Process by Acts of Sederunt as they may consider necessary for carrying into execution the Purposes of this Act.

Court of Session  
empowered to  
make Acts of Sederunt.

XVIII. All Laws, Statutes, and Usages are hereby repealed in so far as the same are inconsistent with the Provisions of this Act, but no further or otherwise.

Repeal of Laws inconsistent with this Act.

XIX. The following Words and Expressions, when used in this Act, shall, in the Construction thereof, be interpreted as follows, except where the Nature of the Provision or the Context of the Act shall exclude or be repugnant to such Construction; that is to say, the Expression "Lord Ordinary" shall include his Successor; the Word "Property" shall include and apply to all Property falling under the Jus mariti; the Expression "Consistorial Action" shall include Actions of Declarator of Marriage, of Declarator of Nullity of Marriage, of Declarator of Legitimacy and Bastardy, Actions of Separation à mensâ et thoro, of Divorce and of Adherence, and of putting to Silence, and Actions of Aliment between Husband and Wife instituted in the Court of Session.

Interpretation of  
Terms.

XX. This Act may in all Proceedings be cited as "The Conjugal Rights (*Scotland*) Amendment Act, 1861."

Short Title.

XXI. This Act shall come into operation on the First Day of *November* now next ensuing, and not before.

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Act.



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## Extract from Prefatory Note.

In the execution of this undertaking, it has been truly and eloquently said, that the Author "had traced the principles with singular skill in all their applications and details, fixing every point by positive authority; but never failing to mark defects and to suggest remedies; till at last he has had the rare honour of having, in his own day, and by his own labour, created the Mercantile Law of his native country. And this is not his only achievement. His subject, in the liberal view in which he deals with it, has led him to examine other commercial systems, and his page shines with all their lights; so that his Work is full of matter worthy the notice of the Lawyers of every country, and is only appreciated justly when it is considered as one of the greatest modern contributions to the science of general Mercantile Jurisprudence." On that subject it became, even in the Author's lifetime, almost the only source to which the Bench and the Bar of Scotland resorted, to aid them in their judicial deliberations and professional avocations.

Changes of a very large and important nature have been effected in almost every branch of our Law since the publication of the last edition. An effort has been made to assimilate the Laws of England and Scotland, especially in Mercantile Contracts; a new Code has been introduced as to Joint-Stock Companies; the Usury Laws have been abolished; the Navigation Laws have been repealed, in so far as they interfere with the freedom of trade, and new regulations framed; the Laws as to Patents and Copyright have been reformed; the proceedings in Diligence against the person and goods, and in Cessio, have been improved; the Law of Succession to Moveables has been partially changed; the forms of the Feudal Law, and the constitution and transmission of Heritable Securities have been simplified; the stringency of Entails has been relaxed; Leasehold Property has been rendered more effectual as the subject of securities; Services have been amended; and the Law of Bankruptcy has been extended and remodelled. I have incorporated these alterations in this edition. They will be found either in the text or in the footnotes, distinguished by an asterisk.

For some time prior to his death, the Author was engaged in preparing a new edition. He had expunged and re-written a considerable portion of the first volume of the last edition. Of that manuscript I have availed myself. I have also taken advantage of his other Works to make this edition more complete, and, in some instances, to introduce from that source chapters entirely new.

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## Prefatory Note.

GEORGE JOSEPH BELL was born in Edinburgh on the 26th of March 1770. On the 19th November 1791 he was admitted to the Bar; and unanimously elected by the Faculty of Advocates, on the 2d of February 1822, Professor of the Law of Scotland in the University of Edinburgh. The motion was made by John Clerk of Eldin, then leader of the Bar, and was seconded by Sir Walter Scott.

Soon afterwards he issued, for the use of the Students, "Outlines" of his Lectures. In 1829 he was induced to give them more extensive circulation by publishing them, under the title of "Principles of the Law of Scotland." He dedicated the book to the Students, expressing a "hope that it would render their study of a very difficult science more easy, by supplying them with a brief statement of the leading rules and exceptions, and a correct list of the authorities relied on in support of the several propositions, or useful in illustrating them." This, which forms the first edition of the work, contained only about nine hundred sections; but it was greatly enlarged in the second edition, published in 1830, which embraced upwards of two thousand four hundred sections, and a large additional number of authorities. The popularity and the utility of the work were shown by a new edition being called for in three years thereafter; and this was followed by the publication, in 1839, of a fourth edition.

Still more to aid the studies of his pupils, Mr Bell published, in 1836 and 1838, "Illustrations of the Principles of the Law of Scotland," in three volumes—a work of much labour and of great utility.

He died in September 1843. In the interval, he had devoted all the time he could spare from the performance of public duties to the preparation of a new edition of his "Commentaries on the Laws of Scotland." On that work he had made large alterations, which are embodied in the edition which I lately published. He had, however, left untouched the "Principles;" and in this edition the text stands as in the last. The only alterations are that the work is now divided into Books and Chapters, that many of the divisions and subdivisions in the sections (which tended somewhat to perplex) have been omitted, and that a few of the sections have been thrown together in order to bring similar or analogous doctrines into immediate juxtaposition.

I have, at those places which I thought most appropriate, introduced a notice of the changes which have been made on the Law by Legislative measures, and I have added to the authorities all those decisions which have been pronounced on the several subjects since the publication of the former edition. Following the same course as in my edition of the "Commentaries," I have marked these additions by asterisks (\*). To each chapter I have prefixed a synoptical index, made references in the authorities to the "Illustrations," and revised and verified the Index of Contents.

(a) Although this was very clearly pointed out in the preface of the work, I have been surprised to learn that an idea exists that all the new matter has been added by me. I beg again to state, that, except as pointed out by the asterisks (\*), the new matter was contained either in the Author's manuscript, or in his other published works, part of which, I explained, I had incorporated in the work.

---

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# ACT OF SEDERUNT,

AS TO THE FORM OF JUDGMENTS TO BE PRONOUNCED IN  
INFERIOR COURTS, IN CASES OF PROOF.

---

EDINBURGH, 15th February 1851.

THE LORDS OF COUNCIL AND SESSION,  
Taking into their consideration,—that, by the Stat.  
13th and 14th Vict., cap. 36, sect. 32, it was  
enacted, “ That in all cases of Advococation or Sus-  
“ pension which shall come to depend before the  
“ Court of Session, where a Record has been made  
“ up and closed, and a Proof led and concluded  
“ before the Inferior Judge, the Lord Ordinary,  
“ before whom such Advococation or Suspension is  
“ enrolled, shall, at the first calling of the cause,  
“ if a motion to that effect be made by either of the  
“ parties, appoint such Record and Proof, with any  
“ other papers which may be deemed to be necessary,  
“ to be printed and boxed for the Judges of the Inner-  
“ House, who shall thereupon proceed to dispose of

“ it in the same way and manner as if it had been  
 “ Reported by the Lord Ordinary upon a Closed  
 “ Record, prepared in the Court of Session ;”—

§ 40. AND, FURTHER, that by Stat. 6th Geo. IV., cap. 120, it was enacted, “ That when in causes commenced  
 “ in any of the Courts of the Sheriffs, or of the  
 “ Magistrates of Burghs, or other Inferior Courts,  
 “ matter of fact shall be disputed, and a proof shall  
 “ be allowed and taken, according to the present  
 “ practice, the Court of Session shall, in reviewing  
 “ the judgment proceeding on such proof, distinctly  
 “ specify in their Interlocutor the several facts  
 “ material to the Case, which they find to be esta-  
 “ blished by the proof, and express how far their  
 “ judgment proceeds on the matter of fact so found,  
 “ or on matter of law, and the several points of law  
 “ which they mean to decide ;”—

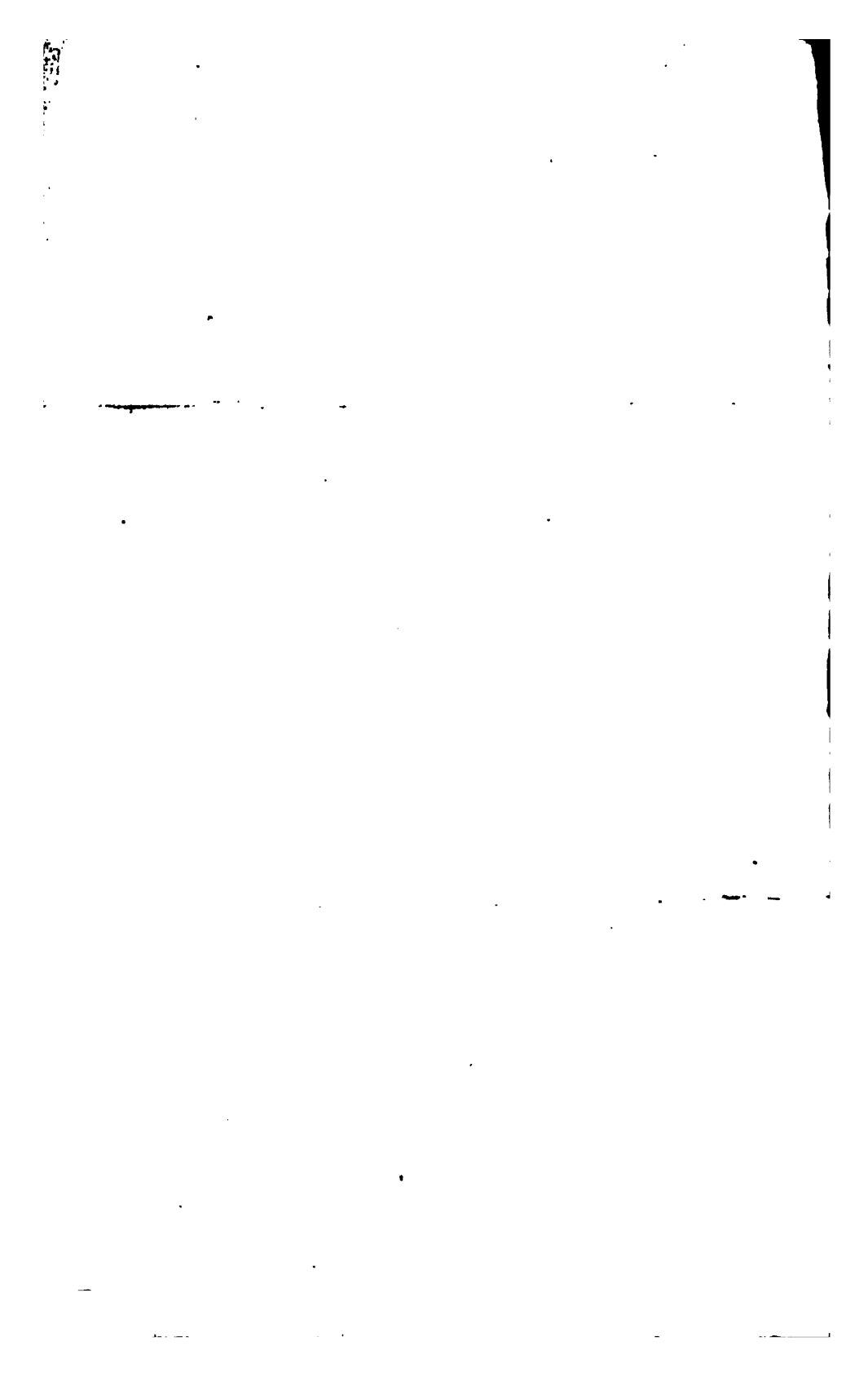
AND deeming it expedient—with reference to the subject-matter of both of these enactments, and especially to the power conferred upon the parties by that first recited, of having their causes upon proof reported directly to the Inner-House, without any Interlocutor being in the first instance pronounced thereon by the Lord Ordinary,—that all judgments proceeding upon proof, to be hereafter pronounced in Inferior Courts, should be prepared and framed

in the like manner, and with the like specification in point of fact and of law, in which it would, according to the present practice, and under the said second recited enactment, be incumbent upon the Lord Ordinary, in reviewing the said judgments, to prepare and frame his Interlocutor ;—

DO HEREBY ENACT AND ORDAIN, That, when in causes commenced in any of the Courts of the Sheriffs, or of the Magistrates of Burghs, or other Inferior Courts, matter of fact shall be disputed, and a proof shall be allowed and taken according to the present practice ; the Sheriffs or other Judges in the said Courts, shall, in their judgment, proceeding upon such proof, distinctly specify the several facts material to the Case which they find to be established by the proof,—and express how far their judgment proceeds on the matter of fact so found,—or on the matter of law,—and the several points of law which they mean to decide.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and printed and published in the usual form.

D. BOYLE, *I.P.D.*



# ACT OF SEDERUNT

AS TO

LODGING RECLAIMING NOTES UNDER THE  
ACT 13TH AND 14TH VICT., CAP. 36.

---

EDINBURGH, 20th July 1853.

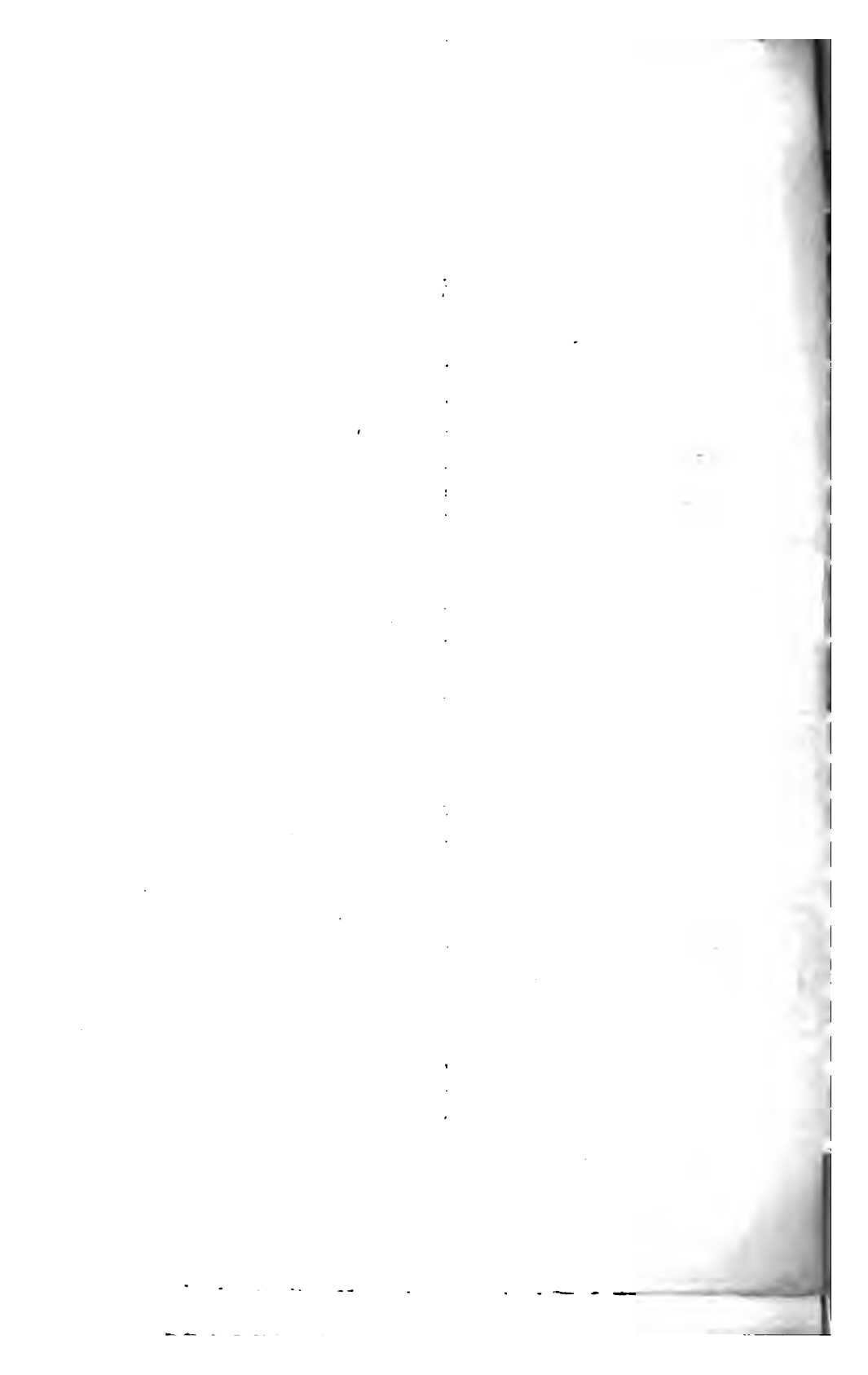
THE Lords of Council and Session, taking into consideration the Act passed in the 13th and 14th years of the reign of Her present Majesty, cap. 36, § 11, do hereby Enact and Declare, under the powers conferred on them by the said Act, that where the ten days, therein mentioned, expire during Vacation or during any Recess of the Court, they shall continue open till the first Box-Day in the Vacation, or till the Box-Day in the Recess; or if they expire after the Box-Day in the Recess, they shall continue open till the first Sederunt Day after the Recess.

And the Lords APPOINT this Act to be engrossed in the Sederunt Book, and printed and published in the usual manner.

DUN. M'NEILL, *I.P.D.*









# ACT OF SEDERUNT

MAKING

**CERTAIN ADDITIONS to, and ALTERATIONS upon, the TABLE of FEES for PRACTITIONERS before the COURT of SESSION.**

EDINBURGH, 7th July 1858.

**THE LORDS OF COUNCIL AND SESSION** considering that the Table of Fees for Practitioners before the Court of Session, which, with certain additions and alterations, was enacted and made perpetual by the Act of Sederunt 17th July 1841, has, in some respects, become unsuitable or inapplicable in consequence of changes since introduced into the forms and mode of judicial procedure, **DO HEREBY ENACT and DECLARE**, that the said Table of Fees, as presently in force, shall henceforth be acted on, with, and subject to, the following alterations and additions.

There shall be exigible, under the head of "Bill-Chamber Proceedings :"—

For ordering and procuring copies and certified copies of Interlocutors and Extracts, the same charge as in the Outer House.

Under the head of "Outer House Procedure," in place of Article 2d, the following shall be substituted:—

For instructing Counsel (where no fee is paid) and attendance at the calling in the Motion Roll, 6s. 8d. But there shall be no charge for attendance unless the cause be called; nor where the calling proves abortive, unless this shall occur without fault or neglect of the Agent.

When the case is in the Debate Roll, then at the conclusion of every debate, £2, 2s. But no other charge shall be made for attendance in respect of the case being in the Debate Roll,—however long the debate may have continued, or however often the case may have been called for such debate,—unless the attendance shall have been unusually and unavoidably prolonged, and the Lord Ordinary shall certify, by marking on the Interlocutor sheet that an extra sum, the amount of which he shall state, should be allowed; and in such case, the extra sum so certified shall also be chargeable.

*Note.*—The above charge for the debate is intended also to cover watching when the case is in the Debate Roll without being called.

Under the general head of “Outer House and Inner House,” the following shall be added:—

1. For Examining Papers lodged by opposite party, and ascertaining new matter, and to what extent additional information may be required, where no memorial is prepared in consequence, the same fee as allowed for revising papers drawn by Counsel, according to the length.
2. Perusing and Considering Reports obtained under remit, or Productions made or recovered under a

diligence, whether copies be afterwards made or not, where no memorial is prepared in consequence, to be charged according to time occupied.

3. Attendance on Reporter with Proceedings, &c., and getting him to accept remit, 6s. 8d.
4. Attendance on Reporter, getting up his Report, and Settling his Fee, 6s. 8d.
5. Attendance on Commissioner under Commission and Diligence, and getting up his Report with Productions, &c., and Paying his Fee, 6s. 8d.
6. Writing Commissions or Diligences against Witnesses or Havers, and other similar writings, and duplicates thereof, when necessary,—first sheet, 6s.; every other, 4s.
7. Preparing for Hearing or Advising in Inner House, and for Debates in Debate Roll in Outer House, where no memorial is prepared at the stage of the cause, 13s. 4d.
8. For examining Reclaiming Note and Appendix of opposite party, to ascertain correctness thereof, 6s. 8d.
9. For each day in which a case stands in the Inner House Rolls, though not called, 6s. 8d.
10. Drawing Note to Extractor for Extract, Lodging same, Transmitting Process, and Procuring Extract, 6s. 8d.

11. Inquiries, if paper of opposite party lodged, 3s. 4d.  
But this to be charged only once as to each paper.
12. Attending Consultation with Counsel at Chambers,  
at any important stage of a cause, where no  
memorial is charged, 6s. 8d. per hour, over and  
above the charges for attendance with papers  
and fee, and fixing the consultation.

The enactments in the table, under the head of "Proceedings in Jury Causes," are hereby repealed, and in place thereof, it is enacted and declared that the same charges shall be allowed in Jury Causes as in other causes in the Court of Session, with the following additions and variations:—

- (1.) In respect a Jury Trial is generally attended with an extra degree of trouble, there shall continue to be allowed (as at present) for the day of trial, if the trial shall not exceed four hours, L.2, 2s.; exceeding four hours, and not exceeding six, L.3, 3s., and for each additional hour above six, 6s. 8d.
- (2.) For perusing Record, Productions, and Precognitions, &c., before Trial, and preparing for same, from 13s. 4d. to L.3, 3s., according to the time occupied and importance of the case.
- (3.) A Copy of the Precognitions for the use of the Agent at the trial, to be allowed.
- (4.) In addition to the same charge as in ordinary Court of Session cases, for Notices of Motions, there shall be allowed, after Issues are adjusted,

for each Notice of Motion lodged in Process, and  
Boxed to the presiding Judge, 3s. 4d.

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PROCEEDINGS in SEQUESTRATIONS under the  
BANKRUPT ACT.

1. For receiving instructions and explanations to  
apply for Sequestration, 6s. 8d.
2. Attendance obtaining deliverance on the applica-  
tion, 6s. 8d.
3. Transmitting to Sheriff-Clerk, 3s. 4d.]
4. Drawing Abbreviate of Sequestration, and getting  
same entered in Register of Inhibitions, 6s. 8d.
5. Inserting Advertisement in each Gazette—whether  
the Edinburgh or London Gazette—besides the  
usual fees of drawing the Advertisement, accord-  
ing to the length, 3s. 4d.
6. Obtaining deliverance declaring Election of Trus-  
tees and Commissioners, 6s. 8d.
7. Taking out Bond of Caution, getting it signed by  
Trustee and Commissioners, and lodging, 6s. 8d.
8. Taking out Act and Warrant, and transmitting  
same to Accountant in Bankruptcy, 6s. 8d.
9. Drawing Abbreviate of Trustees' Confirmation,  
and copying and recording the same, 6s. 8d.

10. Framing Note when first Dividend payable, and  
List of Commissioners, and lodging same, 6s. 8d.

The other charges in Sequestrations to be the same with charges for similar or analogous business in the Bill Chamber.

And the Lords enact and declare that this Act of Sederunt shall come into operation from and after the 20th day of July current; and they appoint the same to be recorded in the Books of Sederunt, and printed and published in the usual manner for the information of all concerned.

DUN. M'NEILL, *I.P.D.*

# ACT OF SEDERUNT

TO REGULATE

**BORROWING and RETURNING of PROCESSES  
and Relative Matters, and the ATTENDANCE of  
the CLERKS at the REGISTER HOUSE.**

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EDINBURGH, 7th July 1858.

THE LORDS OF COUNCIL AND SESSION, considering the expediency of better regulating the borrowing and returning of Processes, and relative matters, and the attendance of the Clerks at the Register House, do hereby enact and declare as follows:—

1. In addition to the Inventory at present in use, and separate Inventories of Productions, a full Inventory, with corresponding numbers, but in a consecutive form, to be called Duplicate Inventory, shall be provided and kept, in which shall be entered each step of Process, including each Production. The principal Inventory, and all separate Inventories, shall, at all times, remain with the Clerk to the Process, and be accessible in his hands only; and it shall be the duty of the Agent, who is at present bound to lodge a Process Inventory, to provide and lodge at the same time the above duplicate Inventory, which duplicate shall at all times accompany the Process, when borrowed

and returned, and when sent to avizandum; and it shall be the duty of the Agent returning the Process, to keep such duplicate Inventory complete, by adding thereto, on each occasion, the additional pleadings and productions lodged for his client,—the Agent being, in all cases, entitled, in respect of such duplicate Inventory, to the same copying fees, according to the length, which he would otherwise be entitled to, under existing regulations, in respect of copying a Process Inventory or Inventory of Productions.

2. The Clerks shall (except as after mentioned) receive back no Process, or part of a Process, without at once either comparing it with the principal Inventory and Receipt in presence of the Agent or his Clerk, and scoring the Receipt; or, in the case of a partial return, marking on the principal Inventory the numbers so returned; or otherwise, if the whole numbers borrowed be not then returned, or if the Process be bulky so that it cannot, at the time, be conveniently examined, the Clerks shall not receive back such Process, or part of a Process, without a separate slip or note accompanying the same, dated and signed or initialed by the Agent or his Clerk, specifying the numbers so returned; and it shall be the duty of the Clerk, in all cases where he receives back a Process, or part of a Process, without at once scoring the Receipt, or making a marking on the Inventory as aforesaid, as the case may be, to examine the same before the close of the following day at latest, and to give notice to the Agent of any inaccuracy, if there be such, in the slip or note aforesaid, and if no notice to the Agent be delivered or put into the Post-Office, in the course of such following day, stating that such slip or note is inaccurate, the accuracy



thereof shall be presumed, and the Agent shall be equally exonerated as if the Receipt had been scored, or a marking made as aforesaid.

3. It shall be the duty of the Agent returning the whole or any part of a Process, to see that, in all cases, the numbers so returned are previously arranged in their regular order according to the Inventory, and the Clerk may refuse to receive any Process, or part of a Process, the numbers of which are not so arranged. The business of each Agent or his Clerk shall, in all cases, be attended to in the order in which they enter the office.

4. The foregoing Rules and Regulations shall be equally applicable to Bill-Chamber cases and procedure, and to the Clerk or Clerks to the Bills, as to other cases and procedure, and to the other Clerks.

5. The Inner-House and Outer-House Assistant-Clerks shall attend at the Register-House, and keep their Offices open for performance of their official duties during the following hours: viz.,—In Session time every lawful day from 2 to half-past 3 o'clock P.M., and from 6 to 8 o'clock P.M., with the exception of Mondays, when the hours shall be from 11 o'clock A.M. to 2 o'clock P.M., and from 6 to 8 o'clock P.M., and with the farther exception of Saturdays, when no attendance at the Register-House shall be necessary. In time of Vacation or Recess, the hours of such attendance shall be from 11 o'clock A.M. to 1 o'clock P.M. on Tuesdays, Wednesdays, and Thursdays.

6. This Act of Sederunt shall come into operation from and after the 20th day of July current.

7. All existing Rules and Regulations are hereby repealed, in so far as necessary to give effect to this Act of Sederunt, but no farther.

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be printed and published in the usual manner.

DUN. M'NEILL, *I.P.D.*

ACT OF SEDERUNT,  
TO REGULATE PROCEEDINGS IN OUTER HOUSE.

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EDINBURGH, 15th July 1865.

THE Lords of Council and Session, considering that, by the Act 13th and 14th Vict., c. 36, section 54, they are empowered to make such regulations, by Act or Acts of Sederunt, as they may deem meet for carrying into effect the purposes of the said Act; and considering further, that, in various particulars, it is proper that the proceedings in the Outer House should be amended and regulated, do hereby enact and declare, that, on and after the 12th day of November next, the following regulations shall take effect, and be enforced, with reference to the said proceedings:—

1. When a cause is called in the Debate Roll, and no Counsel attends on either side, nor any admissible excuse is made for their non-attendance, the Lord Ordinary shall, by an entry on the Interlocutor sheet, direct the cause to be deleted from the Roll, and the same shall only be re-enrolled at the bottom of the Roll; and the Auditor shall, in taxing any Account of Expenses, either as between party and party, or as between Agent and Client, disallow any charges rendered unavailing by the cause not having been proceeded with.

2. When, on such calling of a cause, Counsel shall appear on one side only, and no admissible excuse shall be made for the non-attendance of Counsel on the other side, it shall be competent for the Counsel appearing to take decree by default in favour of his Client; and if he shall not do so, the cause shall be deleted from the Roll, in manner, and with the consequences, before mentioned.

3. It shall not be competent to have such decree by default recalled of consent of parties, but the decree shall be recalled on a reclaiming note only; and unless where the Court shall otherwise direct, the Auditor shall, in taxing any Account of Expenses incurred to his Agent by the party against whom such decree is taken, disallow the expenses of having such decree opened up.

4. No excuse in respect of another engagement shall be admissible for the non-attendance of Counsel, except his being at the time engaged in a case before the Inner House, and being the sole Counsel on his own side in attendance, or if not sole Counsel, being the Counsel addressing the Court, or about to reply to the Counsel on the opposite side: or his being engaged in a Jury Trial, or at another Lord Ordinary's bar; but, in the last-mentioned case, only if either actually addressing the Lord Ordinary, or about to reply to the Counsel on the opposite side.

5. Every debate shall be proceeded with and

brought to a close by the Counsel at the time in attendance ; and, except on special cause shown, no delay or adjournment of any debate shall be allowed. But it shall be always competent to the Lord Ordinary on special cause shown, to continue or adjourn any debate to another day, not more than eight days afterwards, when the debate shall be proceeded with and completed by the Counsel then in attendance.

6. The Counsel who is addressing the Lord Ordinary, or who is about to reply to the Counsel on the other side, shall not be entitled to leave the bar for any other Lord Ordinary's bar, but only if called to attend a Jury Trial, or the Inner House ; and, in the last-mentioned case, only if no other Counsel on the same side be in attendance in the Inner House. And the distinction of Preference Bars in the Outer House shall no longer prevail.

7. Each Lord Ordinary shall put out in his Weekly Debate Roll not more than eight cases at a time ; but it shall be competent to put out additional debates in the course of the week, the same being put out in the Roll two days before they are called.

8. Each Lord Ordinary shall call his Motion Roll before any other business is taken up, other than the calling of the Printed Roll of the week.

9. When a cause is enrolled in the Motion Roll, and the case is dropped without any motion being

made, the Auditor shall, in taxing any Account of Expenses, either as between party and party, or as between Agent and Client, disallow the expenses occasioned by such Enrolment, unless he is satisfied that the cause was properly enrolled, and properly dropped.

10. When a process is transmitted to the Lord Ordinary for adjustment of the Record, on revised papers, he shall forthwith appoint a day on which the cause shall be in the Roll for such adjustment: And the Pursuer shall thereupon be entitled to borrow the process, and to make on the margin of his revised paper such alterations or additions as he may consider to have been rendered necessary by the statements of the Defender; such alterations or additions being made anterior to the time of the cause appearing in the Roll under the Lord Ordinary's appointment. Where no such alterations or additions have been made, the Lord Ordinary shall on that day close the Record. In the event of such alterations or additions having been made, the Lord Ordinary shall appoint another day on which the Record shall be closed; and it shall be thereon competent to the Defender to make on the margin of his revised paper such alterations or additions as he may consider to have been rendered necessary by those of the Pursuer—the same being made not later than the second day before that on which the Record is appointed to be closed; and the process being on that day returned to the Clerk. And on

the day appointed by him, the Lord Ordinary shall close the Record. Provided always that, on every occasion on which the case is in the Roll for the purpose of closing the Record, it shall be competent to the Lord Ordinary, on special cause shown, to allow any further amendment which may seem to him proper, to be made either at the bar at the time of closing, or before such other day as he shall specially appoint, and to which he shall continue the cause. And the Lord Ordinary shall, at the time of closing the Record, if he shall see cause, find any party who shall seem to him to have unduly delayed the closing of the Record, liable in such sum of expenses as he shall think just.

11. The Lord Ordinary shall, at the time of closing the Record, require the parties to state, either then, or at an after day which he shall appoint, and to which he shall continue the cause, whether they are ready to renounce further probation; and if they are ready to do so, a minute to that effect shall be subscribed by the Counsel for the parties, and lodged in process: and the Lord Ordinary shall thereon appoint the cause to be debated. And, if the parties, or any of them, do not agree to renounce further probation, the Lord Ordinary shall, with due regard to the state of the Record, pronounce an interlocutor, appointing an Issue or Issues to be given in for trial by jury, or such other proof in the case as may be competent and proper; or else appointing a debate on the cause, or such

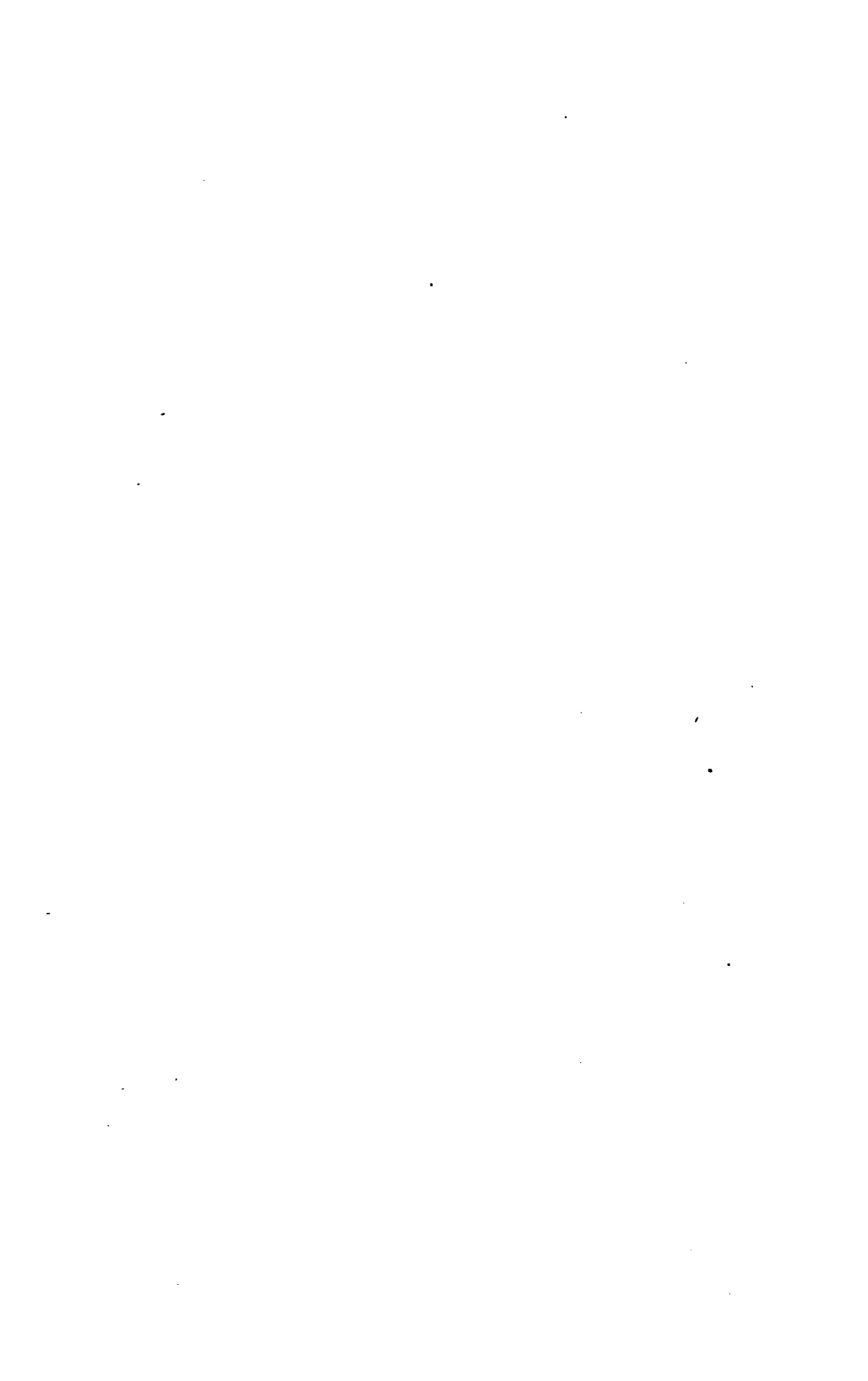
parts of it as he may think proper. And such debate shall, when the Lord Ordinary thinks fit, be heard summarily, at the end of the Motion Roll.

12. All appointments for the lodging or adjusting of Issues shall be held to be peremptory; and if the Issue or Issues be not lodged within the time appointed, it shall be competent to the opposite party to enrol the cause, and to take decree by default; which decree by default shall not be opened up by consent of parties, but only on a reclaiming note. And it shall not be competent, by any consent of parties, to delay the adjustment of the Issues beyond the second Statutory Meeting; but if Issues shall not then be adjusted, it shall be in all cases imperative on the Lord Ordinary to report the case to the Inner House, in terms of the Statute.

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be published in the usual manner; and copies thereof to be transmitted to both Houses of Parliament in terms of the before-recited Act.

DUN. M'NEILL, *I.P.D.*







# ACT OF SEDERUNT

IN

PURSUANCE OF THE 'COURT OF SESSION ACT 1868,' AND 'THE  
TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT 1868,'  
ANENT INHIBITIONS.

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EDINBURGH, 18th November 1871.

THE Lords of Council and Session, in pursuance of the powers vested in them by the Act of Parliament 31 and 32 Vict., chapter 100, entitled 'An Act to amend the ' Procedure in the Court of Session and the Judicial ' Arrangements in the Superior Courts of Scotland, and ' to make certain Changes in the other Courts thereof ;' and in pursuance of the powers vested in them by the Act of Parliament 31 and 32 Vict., chapter 101, entitled ' An Act to Consolidate the Statutes relating to the Con- ' stitution and Completion of Titles to Heritable Pro- ' perty in *Scotland*, and to make Certain Changes in the ' Law of *Scotland* relating to Heritable Rights,' do hereby ENACT and DECLARE as follows :—

I. That the mode of obtaining Warrant for signing Letters of Inhibition in the form mentioned in Section 156 and Schedule (Q Q) of the said last recited Act, shall be by production of a *Fiat ut petitur* duly obtained in the Bill Chamber, on a Bill presented along with a

proper ground of Debt, or along with a depending Summons upon which the Inhibition is to be raised.

II. That nothing herein contained shall apply to Inhibition, on a Warrant to Inhibit contained in the Will of a Summons, in virtue of the powers conferred by Section 18 of the ' Court of Session Act, 1868.'

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be published in the usual manner.

(Signed)      JOHN INGLIS, *I.P.D.*





# ACT OF SEDERUNT

IN

## PURSUANCE OF 'THE JUDGMENTS ' EXTENSION ACT, 1868.'

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The Lords of Council and Session, in pursuance of the powers vested in them by the Act of Parliament passed in the 31st and 32d year of Her present Majesty's reign, chapter 54, entituled, 'An Act to render Judgments or Decrees obtained in certain Courts in *England, Scotland, and Ireland* respectively, effectual in any other part of the United Kingdom,' do hereby Enact and Declare as follows:—

I. That in the Extract of a Certificate of any Judgment obtained or entered up in any of the Courts of Queen's Bench, Common Pleas, or Exchequer, at Westminster or Dublin respectively, for any Debt, Damages, or Costs, and Registered in the Books of Council and Session, under the powers conferred by the second section of the said Statute, the *inducia* of Charge shall be Fifteen Days, as in an Extract of a Decree pronounced by the Court of Session.

II. That, for the Registration of each such Certificate and the Extract thereof, the Fees shall be charged

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which are authorised by the Statute 50 George III. c. 112, to be exacted upon Extracts of Deeds recorded in the Books of Council and Session, and that the same Fees shall be charged for each subsequent Extract.

III. That a Fee of Two Shillings shall be paid for each Certificate issued, in terms of the third section of 'The Judgments Extension Act, 1868,' and no Fee-fund Dues shall be Charged upon such Certificates.

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be published in the usual manner.

(Signed) JOHN INGLIS, *I.P.D.*

EDINBURGH, *11th July* 1871.







# ACT OF SEDERUNT

ANENT

## THE PROCEEDINGS IN FACTORIES AND CURATORIES.

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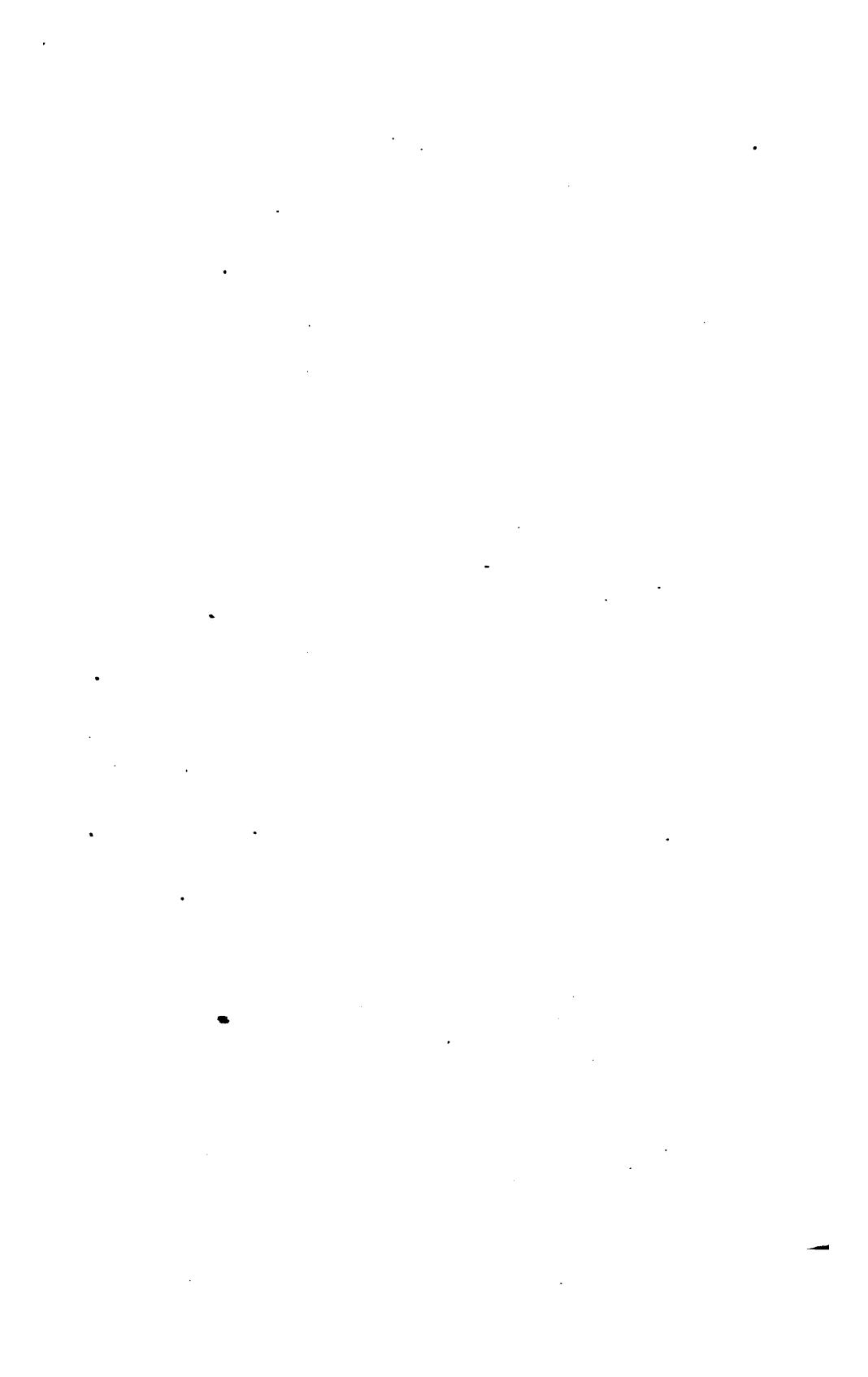
EDINBURGH, 8th December 1870.

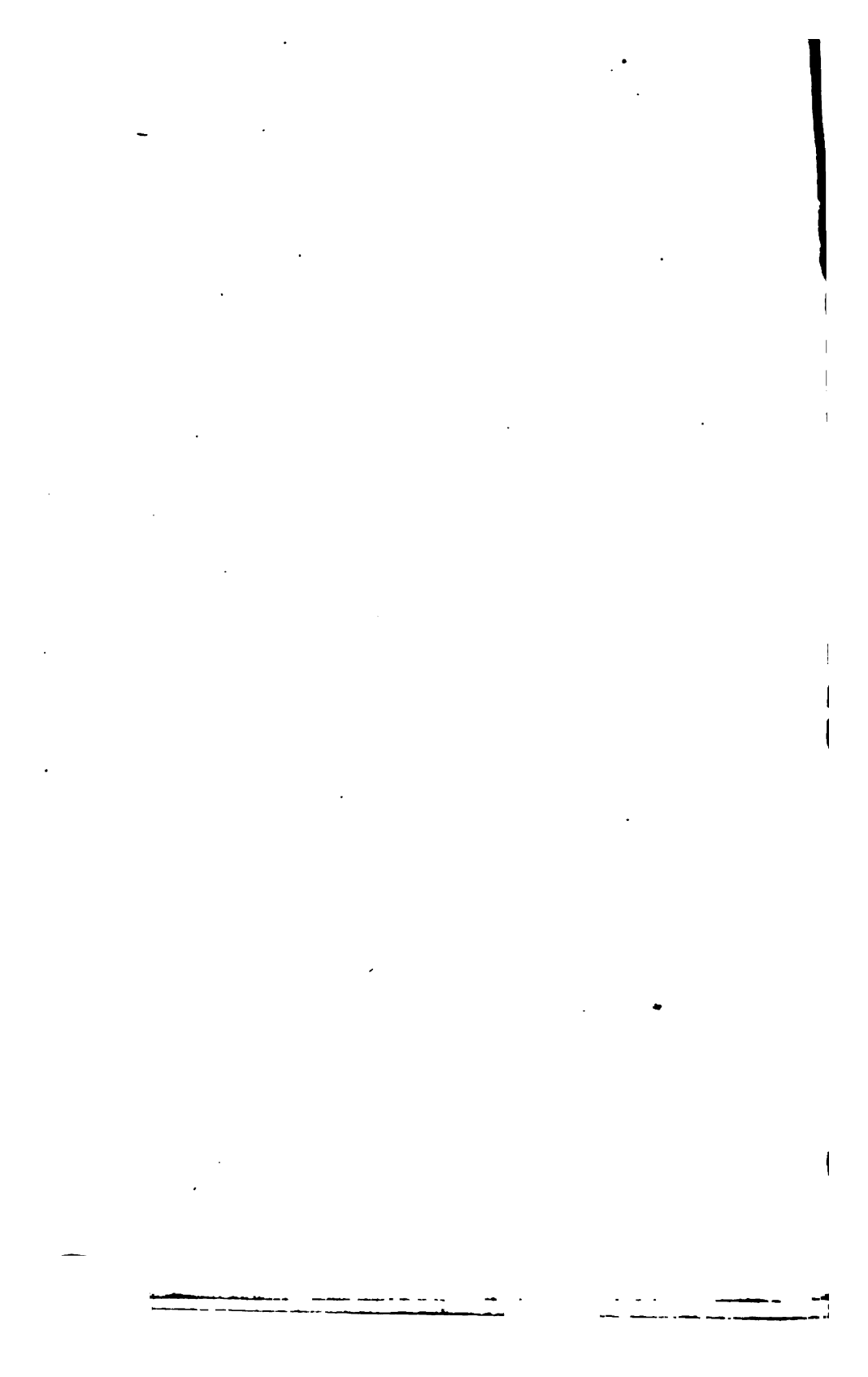
The LORDS OF COUNCIL AND SESSION, considering that, under the Act of Parliament passed in the 20th and 21st Years of the Reign of Her present Majesty, chap. 56, Petitions for Interim Audit of Accounts, for Special Powers, and for Exoneration or Discharge of Judicial Factors, Factors *loco tutoris* or *loco absentis*, or Curators *Bonis*, whether appointed before or after the passing of the said Act, are presented to the Junior Lord Ordinary for the time, and that such Interim Audit takes place, Special Powers are granted, and Decree of Exoneration and Discharge may be pronounced and extracted under such Petitions, while the original Petition and Proceedings thereon, where the Appointments have been made by either Division of the Court, remain in the Offices of the Principal Clerks of Session, who are not authorised to transmit them to the Clerk of the Junior Lord Ordinary, Do HEREBY AUTHORISE AND DIRECT the said Principal Clerks,

when any such Petitions for Interim Audit, or for Special Powers, or for Exoneration and Discharge, shall be presented to the said Lord Ordinary, to transmit the said original Petition and Proceedings to the Clerk attached to his Lordship ; and AUTHORISE and DIRECT the said Clerk, when necessary, to transmit of new the whole Proceedings to the said Principal Clerks.

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be printed and published in the usual manner.

(Signed) JOHN INGLIS, *I.P.D.*















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